

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
Dr. B.R.R. KUMAR, ACCOUNTANT MEMBER**

I.T.A. No.3312/DEL/2019
Assessment Year: 2015-2016

Orient Craft Ltd., C/O RRA Tax India D-28, South Extn. Part-I, New Delhi.	vs.	DCIT, Central Circle-II, Gurgaon.
TAN/PAN: AAACO0068M		
(Appellant)		(Respondent)

I.T.A. No.5039/DEL/2019
Assessment Year: 2015-2016

DCIT, Central Circle-II, Gurgaon.	vs.	Orient Craft Ltd., C/O RRA Tax India D-28, South Extn. Part-I, New Delhi.
TAN/PAN: AAACO0068M		
(Appellant)		(Respondent)

Appellant by:	Dr. Rakesh Gupta, Adv.		
Respondent by:	Ms. Pramita M. Biswas, CIT-D.R.		
Date of hearing:	14	07	2021
Date of pronouncement:	24	09	2021

ORDER

PER AMIT SHUKLA, JM

The Assessee and the Revenue both are in appeal against the Order of Commissioner of Income Tax (Appeals)-III, Gurgaon, dated 30.03.2019. The grounds of appeal raised by the Revenue and by the assessee, respectively are as under:-

That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in assuming jurisdiction u/s 153A and further erred in passing the impugned assessment order.

1. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in assuming jurisdiction and framing the impugned assessment order u/s 153A, is bad in law and against the facts and circumstances of the case and the same is not sustainable on various legal and factual grounds.

2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making disallowance of Rs.19,46,05,259/- allegedly on account of bogus expenses claimed with respect to M/s Shri Ram Exports, more so when no incriminating material has been found as a result of search and impugned addition has been made by recording incorrect facts and findings and without observing the principles of natural justice and without appreciating/considering the submissions of the assessee.

3. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making disallowance of Rs.19,46,05,259/- allegedly on account of bogus expenses claimed with respect to M/s Shri Ram Exports, is bad in law and against the facts and circumstances of the case.

4. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.27,19,08,768/- allegedly on account of bogus purchases from M/s Akansha Fashion and M/s Jindal Fashion, more so when no incriminating material has been found as a result of search and impugned addition has been made by recording incorrect facts and findings and without observing the principles of natural justice and without appreciating/considering the submissions of the assessee.

5. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs.27,19,08,768/- allegedly on account of bogus purchases from M/s Akansha Fashion and M/s Jindal Fashion, is bad in law and against the facts and circumstances of the case.

6. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.1,04,00,175/- allegedly as unexplained transactions

recorded in seized document on account of bogus purchases from M/s Super Connection, more so when no incriminating material has been found as a result of search and impugned addition has been made by recording incorrect facts and findings and without observing the principles of natural justice and without appreciating/considering the submissions of the assessee.

7. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs.1,04,00,175/- allegedly as unexplained transactions recorded in seized document on account of bogus purchases from M/s Super Connection, is bad in law and against the facts and circumstances of the case.

8. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.6,63,79,551/- allegedly as unexplained transactions recorded in seized document on account of bogus purchases from M/s 5 Employees Co., more so when no incriminating material has been found as a result of search and impugned addition has been made by recording incorrect facts and findings and without observing the principles of natural justice and without appreciating/considering the submissions of the assessee.

9. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making

addition of Rs.6,63,79,551/- allegedly as unexplained transactions recorded in seized document on account of bogus purchases from M/s 5 Employees Co, is bad in law and against the facts and circumstances of the case.

10. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in sustaining the disallowance of Rs.72,740/- made by Ld. AO u/s 14A, more so when no incriminating material has been found as a result of search*

11. *That in any case and in any view of the matter, addition made in the impugned assessment order are beyond jurisdiction and illegal also for the reason that these could not have been made since no incriminating material has been found as a result of search.*

12. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in passing the impugned assessment order without there being requisite approval in terms of section 153D and in any case approval if any is mechanical without application of mind and is no approval in the eyes of law.*

13. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234B of Income Tax Act, 1961.*

Departmental Grounds of Appeal

i) *Whether on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in deleting the disallowance of product development / sampling expenses Rs 16,06,31,683/- made by the AO by ignoring the decision of the Hon'ble Supreme Court in the case of Madras Industrial Investment Corporation Ltd. Vs. CIT 225 ITR 802.*

ii) *Whether on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in deleting the addition of Rs. 9,20,23,623/- on account of unexplained cash sales which the director of assessee company had admitted in his statement recorded under oath during the search proceedings.*

iii) *Whether section 14A(1) of the Income Tax Act, 1961 would stand attracted even if the tax-exempt income is not actually earned during a particular year subject to expenditure relatable to such income having been incurred during the year.*

iv) *Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) is justified in deleting the addition on account of section 14A without appreciating that while noticing the objects and reasons behind introduction of section 14A of the Income Tax Act 1961, the Hon'ble Supreme Court held in CIT v. Walfort Share & Stock Brokers (P) Ltd [2010] 326 ITR 1 (SC) that expenses allowed can only be in respect of earning of taxable income.*

v) Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) is Justified in deleting the addition made on account of section 14A of the Act without appreciating the judgment of Hon'ble Supreme Court in CIT v. Rajendra Prasad Moody [1978]115 ITR 519(SC) which held that the allowability (or otherwise) of an expenditure would not depend upon whether it has in fact resulted in income, and that the mere fact that expenditure stands incurred for the purpose is sufficient for its admissibility, and whether the ratio of this Judgment can be applied to say, by the same analogy, that the expenditure incurred to earn an exempt income is subject to its admissibility under the provisions of the Income Tax Act, 1961 including those of section 14A irrespective of whether there is a receipt of exempt income during the year under consideration.

vi) Whether on the facts and in the circumstances of the case and in law the Ld CIT(A) is justified in deleting the addition made on account of section 14A of the Act without appreciating the observations of the Hon'ble Supreme Court in Maxopp Investment Ltd. reported in (2018) 91 taxmann.com 154 (SC), that as per section 14A(1) of the Act, deduction of that expenditure is not to be allowed which has been incurred by the assessee "in relation to income which does not form part of the total income under this Act".

vii) *Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) is justified in deleting the addition made on account of section 14A of the Act without adjudicating on the proposition of law u/s 14A of the Income Tax Act, 1961 as propounded by the CBDT Circular No. 5 of 2014 dated 11.02.2014 i.e. section 14A is triggered for disallowance of expenditure incurred which is relatable to tax-exempt income even though no tax-exempt income under the Act has been earned during a particular year.*

viii) *Whether the CBDT Circular No 5 of 2014 is illegal and not in consonance with legislative intent behind Section 14A and the charging sections 4 and 5 of the Income Tax Act 1961 which lay down that total income under the Act would include income from all sources whether "received", "deemed to be received", "accrued" or "deemed to accrue".*

ix) *The appellant craves to add, amend, alter or modify grounds of appeal at the time of hearing.*

2. Assessee has filed paper book in 7 Volumes having pages 1 to 1891, which were referred by Ld. AR extensively during the course of hearing of the above appeals. Brief synopsis has also been filed by Ld. Counsel for the assessee in both the appeals running into 13 pages, which is also held on record and has also been considered by us.

3. The case of the assessee represented by Dr. Rakesh Gupta and that of Revenue represented by Ms. Parmita Biswas. Arguments were extensively heard on all the grounds involved. Since both appeals are the cross appeals and

therefore, we take both the appeals for disposal by taking the assessee's appeal first.

4. Ground of appeal no. 1 and 2. These grounds were relating to assumption of jurisdiction under section 153A but these grounds of appeal were not pressed by Ld. Counsel as per the brief synopsis filed and hence these are dismissed.

5. Ground No. 3 and 4 of the assessee's appeal are in respect of disallowance of Rs. 19,46,05259/- made by the A.O. and confirmed by CIT(A) and are in respect of the expenses claimed to be incurred by the assessee company on account of job work done by M/s Shri Ram Exports. Assessing Officer at page 28-36 of his order held such expense as bogus which was upheld by CIT(A) vide discussion made at page 68-73.

6. It was submitted by the Ld. Counsel with the help of various evidences referred at page 1879-1884 of the paper book& It was argued that M/s Shri Ram Exports was one of the job workers engaged by the assessee for doing various job work such as bundling, cutting, stitching, thread cutting, finishing etc., which are integral part of the garments manufacturing and further submitted that these job work activities are such without which it was not possible to manufacture the garments and therefore export sales could not be possible. On the other hand, Ld. CIT (DR) relied upon the findings recorded in the assessment and first appeal order.

7. We have considered the entire material before us including the paper books, orders of the lower authorities, synopsis filed before us, written submissions filed before CIT(A) which is part of the paper book. It is seen by us that page 28-36 of the assessment order does not refer any incriminating material found as a result of search in respect of job work of M/s Shri Ram Export which was the proprietary concern of Sh. Subhash Chand Gupta. Only evidence which have been referred in the assessment order was that at the address mentioned in the income tax return of Sh. Subhash Chand Gupta of Shri Ram Export, search was undertaken and that premises was occupied by the sister and brother in law of Sh. Subhash Chand Gupta in which the sister and brother in law told to the search team that Sh. Subhash Chand Gupta resides in district Rohtak, Haryana and that Sh. Subhash Chand Gupta runs a business of selling belts and earns only Rs. 15,000/- per month. And that Auditor of Sh. Subhash Chand Gupta prop. of M/s Shri Ram Export is M/s V.K. Dhingra & Co. who happens to be Auditor of the appellant company also and that email-id on income tax return of Sh. Subhash Chand Gupta and on the return of the appellant company is that of an employee of the appellant company and further that statement of the wife of Sh. Subhash Chand Gupta was recorded according to which Sh. Subhash Chand Gupta was in the business of trading in belts

with monthly income of Rs. 10,000 and having no connection with M/s Orient Craft Ltd.

8. From the findings recorded in the assessment order, it can be said that there is no incriminating material found as a result of search in respect of job work carried out by M/s Shri Ram Export. Even the survey proceeding referred in the assessment order does not indicate any incriminating material. Finding of books of account of M/s Shri Ram Export at the premises of the assessee cannot be taken as the adverse material when it has been the case that M/s Shri Ram Exports was doing substantial for job work of the assessee company only.

9. Arguments were made on the basis of evidences referred at page 1879-1884 of the paper book and It is seen from the evidences placed before us and relied upon by Ld. Counsel for the assessee that the job worker M/s Shri Ram Export has raised invoices (PB 1430-1520) on the assessee company and payment have been made by the assessee company to the job worker through account payee cheques (PB 1638-1688) (PB 1521-1561) and tax having been deducted at source (PB 1564-1569) and documents at page 451-458, 489-1688 of the paper book establish the existence of the job worker and the job work carried out by M/s Shri Ram Exports. We have also seen the evidences referred in the paper book, which also establish the job work done by M/s Shri Ram Export. We have also referred to the copies of the relevant documents

filed before the lower authorities from the Worker's personal Files (PB 489-581) such as Aadhar Card, Application form, appointment letter, joining report, ESI Card, Family photos, PF Form -11, 16 & 2 as per PF rules, ID proof, Medical test report etc. and sample copy of muster roll of the all the employees (PB 582-712) , employed by the job worker for two months for all the years involved and so also we have seen salary sheet for two months on sample basis (PB 713-1313), on account of payment of wages and actuarial certificate. Similarly pages 1335-1395 of the paper book is the sample copy of bonus register showing actual payment proof of bonus to the employees of job workers and paper book page 1396-1401 is the sample copy of Leave register of the employee of the job workers. Similarly paper book page 1402-1416 is the copy of month wise PF and ESI deduction and deposit and sample copy of two months challan of each year along with ledger account of PF, other evidences of the paper book at pages 451-458, 459-488, 423-443, 461-481, 1314-1334, 1417-1429, being repeated submissions made before assessing officer, copy of income tax returns balance sheet etc of the job worker for a y 2015-16, 2014-15, 2013-14, copy of actuarial certificate, copy of license to work at factory under the Factories Act etc are the evidences of M/s Shri Ram Export clearly establish that genuineness of job work charges incurred by the assessee company through M/s Shri Ram Export and therefore the disallowance made in the assessment order and confirmed by CIT(A) is not sustainable

on merit. The adverse observations made by the A.O. in the assessment order have been met by the assessee one by one in its written submissions (PB 1882-1884) filed before CIT (A) which is part of the paper book before us and we have taken ourselves to these adverse observations and response of the assessee and we agree with the Ld. Counsel for the assessee that the adverse observations made by the A.O. are not of substance and misplaced on facts. CIT (A) have mentioned in his order the adverse observations of the A.O. only which in our opinion are misplaced on facts. Contention of CIT(A) that evidence filed by the assessee self-serving documents and circumstantial evidence leads to the conclusion of A.O., are bald assertion. It would be enough for us to say that voluminous documentary evidences filed by the assessee as referred above and considered by us clearly establish the genuineness of the job work expenses covered by the grounds of appeal under consideration. We have gone through the arguments of the assessee in respect of observations made by CIT(A) as contained at page 2-5 of the synopsis filed before us and we find that the evidences filed by the assessee to prove genuineness of the job work have not been found fault with by CIT(A) and there is no corroborative evidence produced against the assessee. We further find that CIT(A) misappreciated the nature of job work being done by this job worker and was not related to the assessee company or its directors. Statement of the wife of the proprietor cannot be used against the assessee. In the result grounds of appeal of

the assessee in this regard are allowed & the addition of Rs. 19,46,05,259/- is hereby deleted.

10. Ground No. 5 & 6 of the assessee's appeal are in respect of disallowance of Rs. 27,19,08,768/- made by the A.O. and confirmed by CIT(A) and are on account of not-genuine purchases of fabric made by the appellant from M/s Jindal Fashion and M/s Akansha Fashion. Assessing Officer at page 27-36 of his order held such purchases were not genuine which was upheld by CIT(A) vide discussion made at page 53-60.

11. Ld. Counsel for the assessee first of all argued that there was no incriminating material found as a result of search in respect of impugned disallowance. Further, it was submitted by the Ld. Counsel with the help of various evidences referred at page 1862-1869 of the paper book & it was argued that appellant is into the business of garments manufacturing in which fabric is the main raw material and input. The appellant has purchased fabric from the above said firm during the year under appeal, which is evident from the chart enclosed in the paper book (PB 138(i)- 138(ii)). Ld. CIT (DR) relied upon the findings contained in the assessment and first appellate order.

12. It is seen that page 27-36 of the assessment order does not refer any incriminating material found as a result of search in respect of purchase of fabric made by the appellant

from M/s Jindal Fashion and M/s Akansha Fashion. Only evidence which have been referred in the assessment order was that ledger account of appellant in the books of the above said concern, i.e. M/s Jindal Fashion, M/s Akansha Fashion from whom the purchases were made, show that bills raised to the appellant by the said concern had mostly consecutive serial numbers and the payments made to the said concern were always in the round figures and that the bank account of the supplier revealed that it received payments and on the same day or within a short span of time, the funds were used to be transferred to other entities and further mentions that the names of certain parties to whom the payments have been made by the said concern and the names of such parties have been mentioned by the Ld. AO in the assessment order and that several adverse things regarding the above supplier based upon some alleged enquiries made.

13. We have considered the entire facts and circumstances as referred in both the orders, submissions of the assessee and Ld. CIT(DR) and various pages of the paper books filed. From the findings recorded in the assessment order, it can be said that there is no incriminating material found as a result of search in respect of purchase of fabric made by the appellant from M/s Jindal Fashion and M/s Akansha Fashion which can be regarded as incriminating material. Even the survey proceeding referred in the assessment order does not indicate any incriminating material.

14. Arguments were made on the basis of evidences referred at page 1862-1869 of the paper book and it is seen from the evidences placed before us and relied upon by Ld. Counsel for the assessee that the purchases of fabric made by the appellant from M/s Jindal Fashoin and M/s Aksnsha Fashion are genuine purchases, which is evident from voluminous documentary evidences filed by the assessee company and payment have been made through account payee cheques and documents at page 132-134, 135-136, 137-138, and various pages of the paper book referred in the written submissions and shown to us which establish the purchases made by the assessee. CIT(A) after considering the submissions of the assessee though upheld the disallowance but the submissions and the evidences furnished by the assessee and held in the paper book to which our attention was drawn, we find that the action of CIT(A) in confirming the impugned addition was not justified.

15. In view of the exhaustive pleadings and evidences filed by the assessee and considered by us, the disallowance made in the assessment order and confirmed by CIT (A) is not sustainable on merit. Comprehensive evidences have been brought on record by the assessee which prove that purchases of the fabric were made by the assessee. Without purchases of the fabric, the business of the assessee involving such large export would not have been possible. Both the suppliers are unrelated parties and assessed to income tax.

The adverse observations made by the A.O. in the assessment order have been met by the assessee one by one and paper pages 1866-1869 and we have taken ourselves to these adverse observations and response of the assessee and we agree with the Ld. Counsel for the assessee that the adverse observations made by the A.O. are not of substance and misplaced on facts. CIT(A) too has mentioned in his order the adverse observations of the A.O. only which in our opinion are misplaced on facts. Contention of CIT(A) that evidence filed by the assessee self-serving documents and circumstantial evidence leads to the conclusion of A.O. It would be enough for us to say that voluminous documentary evidences filed by the assessee are clearly establishing the genuineness of purchases fabric from M/s Jindal Fashion and M/s Akansha Fashion. We do not want to burden our order by repeating the whole hosts of documentary evidences filed in this case which establish that the purchases made by the assessee from the above said two suppliers are genuine purchases. We have gone through the observations made by CIT(A) in his appeal order and we do not agree with them. Opening of the bank account by the suppliers in the same bank in which assessee had bank account is not something which is unusual as it may be necessary for the smoothness of the banking and avoid the loss of time in collecting the cheques etc. We find that the burden to prove purchases was very well discharged by the assessee. We have deleted similar disallowance made in AY 2013-14 and 2014-15. Facts are identical in those years

also. In the result ground of appeal number 5 & 6 of the assessee's appeal of the assessee are allowed and the addition of Rs. 27,19,08,768- is deleted.

16. Ground No. 7, 8, 9 & 10 of the assessee's appeal are in respect of disallowance of Rs. 1,04,00,175/- and Rs. 6,63,79,551/- aggregating to Rs. 7,67,79,726/- made by the A.O. and confirmed by CIT(A) and on account of purchases made by the appellant from M/s Super Connection India P. Ltd. (SCIPL) & other companies. Assessing Officer at page 18-19, 23-27 of his order held such purchases were not genuine which was upheld by CIT(A) vide discussion made at page 60, 63-68.

17. Ld. Counsel for the assessee first of all argued that there was no incriminating material found as a result of search in respect of impugned disallowance. Further, it was submitted by the Ld. Counsel with the help of various documentary evidences referred at page 1869-1879 of the paper book & it was argued that that appellant is into the business of garments manufacturing in which fabric is the main raw material and input. The appellant has purchased fabric from the above said six firms during the year under appeal, which is evidenced by the copies of purchase invoices, copy of statement of account of M/s SCIPL & other companies in the books of in the assessee company as enclosed in the paper book and also statement of account in the books of M/s SCIPL & other parties also enclosed in the paper book which

would show that the payments have been made to M/s SCIPL & other these companies through banking channel. It was also submitted that sales made by M/s SCIPL to the assessee has been accepted in the assessment of M/s SCIPL. Copy of assessment order of M/s SCIPL for A.Y. 2013-14 has been enclosed in the paper book. On the other hand, Ld. CIT(DR) has relied upon the findings recorded in the assessment order and in the order passed by CIT(A).

18. We have considered the entire material including the orders passed by the lower authorities. We have taken ourselves to the pages of the synopsis and paper book filed. We have considered the rival submissions. It is seen that the assessment order does not refer any incriminating material found as a result of search in respect of purchase of fabric made by the appellant from M/s Super Connection India P. Ltd. & other companies. Only evidence which have been referred in the assessment order was that statements of the directors namely Sh. Akshay Dhanda and Sh. Ajay Nagpal were recorded on 22.06.2015, which show that they did not have knowledge of the affairs of the company and that Sh. Sudhir Dhingra, director of the appellant company has provided personal guarantee for the loan raised by M/s SCIPL from Kotak Mahindra bank and also regarding Sh. Akshay Dhanda and Sh. Ajay Nagpal on the basis of their statements and further that bulk of purchases were made by M/s SCIPL from the entities controlled by Sh. Sanjay Jindal and since amount remitted were withdrawn in cash it shows that

ultimate beneficiary was the appellant company and entities controlled by Sh. Sanjay Jindal were mere entry providers and that several adverse things regarding the above supplier based upon some alleged enquiries made.

19. In our considered view, from the findings recorded in the assessment order it can be said that there is no incriminating material found as a result of search in respect of purchases fabric made by the appellant from M/s Super Connection India P. Ltd. & other companies and whatever has been mentioned in the form of statements cannot be regarded as incriminating material. Even the survey proceeding referred in the assessment order does not indicate any incriminating material.

20. Arguments were made on the basis of evidences referred at page 1869-1879 of the paper book and It is seen from the evidences placed before us and relied upon by Ld. Counsel for the assessee that the purchases of fabric made by the appellant from M/s Super Connection India P. Ltd. & other companies are genuine purchases, which is evident from voluminous documentary evidences filed by the assessee company and payment have been made through account payee cheques and documents enclosed in the paper book establish the genuineness of the purchases made by the assessee. CIT(A) after considering the submissions of the assessee upheld the disallowance. At this stage, it would be of help if submissions made by the assessee and documentary

evidences filed in this regard are reproduced so as to bring the depth of the evidences proving the genuineness of the purchases placed & referred at Pages 1869-1879 of the paper book:

*It is respectfully submitted that assessee has purchased fabric from six companies namely M/s Trendy Attire P Ltd of Rs. 1,22,98,493/-, M/S Fashionable Attire P Ltd of Rs. 1,26,16,330/-, M/s Fashionara Apparel P Ltd of Rs.1,40,72,045/-, M/s Modernistic Attire P Ltd of Rs. 1,72,49,024/-, M/s Starline clothing P Ltd of Rs.1,01,43,659/- & M/s Super Connection India P. Ltd. of Rs. 1,04,00,175/-, during the year which comes to an aggregate amount of Rs. 7,67,79,726/-, which is evidenced by the copies of purchase invoices, copy of statement of account in respect of said entities in the books of appellant company at **(PB 2463-2464, 2465-2640, 1739-1764 (which are already enclosed in the paper book for A.Y. 2013-14 in assessee's own case)**, and also statement of account in the books of said entities i.e. six companies at **(PB 1875-1902).which are already enclosed in the paper book for A.Y. 2013-14**, which would show that the payments have been made to said entities through banking channel. It is further important to submit that sale made by the said entities to the assessee company has been accepted in the assessment of said companies. Copy of assessment orders of said six entities are enclosed in **the paper book at PB 1491-1617 of earlier years, which***

are already enclosed in the paper book for A.Y. 2014-15) and at PB 1729-1826 of AY 2015-16 together with copy of acknowledgment of return, computation of income, audited balance sheet, profit & loss account together with all annexure are also enclosed at PB 218-350.

PB 193-350 is the copy of acknowledgment of return, computation of income, audited balance sheet, profit & loss account together with all annexure of the six entities namely of M/s Super Connection India Pvt. Ltd., M/s Fashionable Attire P Ltd, M/s Fashionara Apparel P Ltd, M/s Modernistic Attire P Ltd, M/s Starline clothing P Ltd, & M/s Trendy Attire P Ltd for A.Y. 2015-16.

PB 165-192 is the copy of acknowledgment of return, computation of income, audited balance sheet, profit & loss account and tax audit report for A.Y. 2014-15 of M/s Super Connection India P Ltd. in support of this fact.

PB 351-422 is the copy of acknowledgment of return, computation of income, audited balance sheet, profit & loss account together with all annexure for A.Y. 2014-15 of M/s, Fashionable Attire P Ltd, M/s Fashionara Apparel P Ltd, M/s Modernistic Attire P Ltd, M/s Starline clothing P Ltd, & M/s Trendy Attire P Ltd.

PB 179-199 is the copy of acknowledgment of return, computation of income, audited balance sheet, profit & loss account and tax audit report for A.Y. 2013-14 of M/s Super

Connection India P Ltd. in support of this fact which are already enclosed in the paper book for A.Y. 2014-15.

*It is also submitted that a detailed submissions vide letters dated 11.12.2017 (PB 160-162), 12.12.2017 (PB 163-164) was made during the course of assessment proceeding a copy of which is enclosed in the paper book and which has been reproduced in the assessment order also, in which and along with which detailed justification was made with the help of several annexures that export would not have been possible by the assessee, if it had not purchased the goods from above said companies. In fact input / output ratio and industry consumption were also furnished at **PB 1908-1909 (which is already enclosed in the paper book for A.Y. 2013-14)**. All the annexure referred in that letter are also enclosed in the paper book to show that purchases made by the assessee from six companies could not be disbelieved at **PB 1617-2460, PB 2463-2936 (which is already enclosed in the paper book for A.Y. 2013-14)**.*

***PB 1739-1764** are the ledger accounts of M/s, Fashionable Attire P Ltd, M/s Fashionara Apparel P Ltd, M/s Modernistic Attire P Ltd, M/s Starline clothing P Ltd, M/s Trendy Attire P Ltd & M/s Super Connection India P. Ltd in the books of appellant company, **(which are already enclosed in the paper book for A.Y. 2013-14)**.*

PB 1875-1902 are the ledger account of appellant company in the books six companies namely M/s, Fashionable Attire P Ltd, M/s Fashionara Apparel P Ltd, M/s Modernistic Attire P Ltd, M/s Starline clothing P Ltd, M/s Trendy Attire P Ltd & M/s Super Connection India P. Ltd, **(which is already enclosed in the paper book for A.Y. 2013-14).**

PB 1903 is the detailed chart showing the year-wise purchases from said six companies, **(which is already enclosed in the paper book for A.Y. 2013-14).**

PB 1908-1909 is the category-wise sheet showing total sales in pieces on sample basis and consumption of fabric along with standard input / output norms **(which is already enclosed in the paper book for A.Y. 2013-14).**

PB 1910 is the reconciliation of purchase quantity and value of fabric in the books of appellant showing opening stock of fabric purchase, consumption, cost of fabric sold and closing stock **(which is already enclosed in the paper book for A.Y. 2013-14 in assessee's own case).**

PB 1911-1958 is the detailed chart showing the standard input/output ratio, as prescribed by the Standard Input / Output Norms under hand book of procedure Volume—II of foreign trade policy, published by the Ministry of Commerce **(which is already enclosed in the paper book for A.Y. 2013-14).**

PB 1959 is the detail of comparison between other garment exporter and the appellant company for material consumption as a percentage of sales (**which is already enclosed in the paper book for A.Y. 2013-14**).

Therefore, purchases made by the assessee from M/s, Fashionable Attire P Ltd, M/s Fashionara Apparel P Ltd, M/s Modernistic Attire P Ltd, M/s Starline clothing P Ltd, M/s Trendy Attire P Ltd & M/s Super Connection India P. Ltd were the genuine purchases and the addition made may therefore please be deleted.

Adverse observations made by Ld. A.O. are met as under:-

1. Ld. A.O. has mentioned in **para 5.1.3 to 5.1.5, 5.2 to 5.2.5, of the assessment order** that the statements of the directors namely Sh. Vijender Kumar Jain, Sh. Vijay Kumar Sharma and Sh. BalkishanLuthra, Sh. Ashok Kumar Sharma, were recorded on 29.04.2015, which shows that they did not have knowledge of the affairs of the company.

In reply, it is respectfully submitted that assessee was not made aware at any point of time during assessment proceeding that any statement of these four persons were recorded nor the copies of such statements were supplied to the assessee. So much so copies of such statements have not been made part of the assessment order. Therefore such statements have to be excluded from consideration in view of **Hon'ble Supreme Court decision in the case of Kishnichand Chellaram vs. CIT 125 ITR 713**. Moreover,

no opportunity of cross examination has been allowed to the assessee for that reason also such settlements have to be excluded from consideration. It has also come to the notice of the appellant that such statements were recorded at the back of the assessee and therefore under what circumstances, these statements were given is not known to the assessee. According to the appellant there is no reason why should the directors of M/s Trendy Attire Pvt. Ltd., would have no knowledge of the affairs of TAPL. Therefore this objection of Ld. A.O. may please be rejected.

*2. Ld. AO has mentioned in **para 5.2, 5.4.2, 5.5.2 & 5.6.4 of the assessment order** that post search enquiries reveals that the assessee company made purchases from various companies and these companies no actual material has been supplied.*

In reply, it is respectfully submitted that overwhelming evidences have been furnished substantiating the business done by the assessee, which have not been disputed by Ld. AO. Further, the Ld. AO has failed to bring on record any material or evidence to corroborate arrive at the conclusion that purchases from various companies and these companies no actual material has been supplied. The allegations made by Ld. AO are baseless and this is evident from the very fact he has proceeded to assess the income on the basis of return filed by the assessee company. Therefore, the observation made by Ld. AO that the

purchases made by the assessee company is bogus and is baseless and without any basis, material or evidence.

3. *Ld. A.O. has mentioned in **para 5.6.2 of the assessment order** that statements of the directors namely Sh. AkshayDhanda and Sh. Ajay Nagpal were recorded on 22.06.2015, which show that they did not have knowledge of the affairs of the company.*

*In reply, it is respectfully submitted that assessee was not made aware at any point of time during assessment proceeding that any statement of these two persons were recorded nor the copies of such statements were supplied to the assessee. So much so copies of such statements have not been made part of the assessment order even though it has been mentioned that they are enclosed as Annexure B and Annexure C at **PB 1903, 1908-1909 (which is already enclosed in the paper book for A.Y. 2013-14 in assessee's own case)**. Therefore such statements have to be excluded from consideration in view of **Hon'ble Supreme Court decision in the case of KishnichandChellaram vs. CIT 125 ITR 713**. Moreover, no opportunity of cross examination has been allowed to the assessee for that reason also such settlements have to be excluded from consideration. It has also come to the notice of the appellant that such statements were recorded at the back of the assessee and by calling these persons in the income tax department and therefore under what circumstances, these statements were given is not known to*

the assessee. According to the appellant there is no reason why should the directors of M/s Super Connection India P. Ltd. (SCIPL), would have no knowledge of the affairs of SCIPL. Therefore this objection of Ld. A.O. may please be rejected.

4. Ld. A.O. has also mentioned in **para 5.6.2 of the assessment order** that Sh. Sudhir Dhingra, director of the appellant company has provided personal guarantee for the loan raised by M/s SCIPL from Kotak Mahindra bank.

In reply, it submitted that what is sought to be conveyed by Ld. A.O. from this observation has not been clear. Business relationship of the appellant company with M/s SCIPL was there and therefore, out of business expediency, if guarantee was extended by Mr. Dhingra to M/s SCIPL, nothing adverse can be read into it.

5. Ld. A.O. has mentioned his conclusions in this **para i.e. para 5.6.2 of the assessment order** regarding Sh. Akshay Dhanda and Sh. Ajay Nagpal on the basis of their statements.

In reply, it is submitted that first of all as submitted above, these statements having been recorded at the back of the assessee and copies of statements having not been supplied, have to be excluded from consideration. Even if these statements are taken at their face value then also it is submitted that there is nothing which establishes that sales made by M/s SCIPL made by the assessee company is not genuine. Mr. Dhanda being an employee of a group concern

cannot be read against the assessee as there is no bar from an employee of the group concern running his own company. Since major sales of M/s SCIPL are to the assessee and M/s SCIPL sought help from the appellant company to maintain its books of accounts and if in that process employee of the appellant company if helped M/s SCIPL to maintain its books of accounts at the premises of the appellant company only for the sake of mutual convenience and because of cost considerations mountain cannot be made out of the mole hills.

In other words inferences drawn by Ld. A.O. from the statements of Mr. Dhanda and Mr. Nagpal do not establish that the sales made by M/s SCIPL to the assessee was not genuine, more so when such sales by M/s SCIPL and purchases by the appellant are supported by above mentioned comprehensive evidences and payments having been received / paid through banking channel and more so when the sales made by M/s SCIPL have been accepted by income tax department itself in the assessment of SCIPL, it is submitted above.

6. Ld. A.O. has mentioned in **para 5.6.3,6.4, 6.5, of the assessment order** that bulk of purchases were made by M/s SCIPL from the entities controlled by Sh. Sanjay Jindal and since amount remitted were withdrawn in cash it shows that ultimate beneficiary was the appellant company and entities controlled by Sh. Sanjay Jindal were mere entry providers.

In reply, it is respectfully submitted that these observations of Ld. A.O. are mere surmises and conjectures and there is no cause and effect relationship. If purchases have been made from various entities of Sh. Sanjay Jindal how could that fact alone be taken as the basis to hold that purchases made by the appellant from such entities of Sh. Sanjay Jindal are not genuine. Similarly, if the payment made by these entities from M/s Akansha Fashion and M/s Jindal Fashion are withdrawn in cash by the supplier, how could it establish that beneficiary was none other than the appellant and the suppliers were entry providers. In fact entire case made out by Ld. A.O. seems to have proceeded on a preconceived notion that purchases made by the appellant are nothing but bogus purchases. It is settled law that suspicion howsoever grave cannot par-take the character of evidence. It is submitted at the cost of repetition that assessee has established the genuineness of the purchases with the help of direct and documentary evidences on the one hand and circumstantial evidences on the other. Detailed submissions was made in the assessment proceeding, which is reproduced in the assessment order by which appellant has sought to show and submit that the exports could not have been possible but for the purchases made by the assessee and in this regard assessee has sought to prove this by filing quantitative reconciliation standard input / output norms

(PB 1908-1909, 1911-1958) *(which is already enclosed in the paper book for A.Y. 2013-14)*, comparison between other garments export so and in so forth **(PB 1959)** *(which is already enclosed in the paper book for A.Y. 2013-14)*. Therefore, the action of Ld. A.O. in making the impugned addition of Rs. 7,67,79,726/- is neither correct of fact in law and the same may please be deleted.

7. Ld. AO has mentioned several adverse things regarding the above six suppliers based upon some alleged enquiries made.

In reply, it would suffice to say that so far as above enquiries were not confronted to the appellant.

Moreover, during the course of impugned assessment proceeding also in our reply dated 11.12.2017 **(PB 160-162)** filed to Ld. A.O., we made out specifically and we furnished such details in **Annexure G**, which is enclosed in the paper book at **PB 2463—2640**, **(which is already enclosed in the paper book for A.Y. 2013-14)** that the said supplier was selling the fabric to the appellant company and the material / fabric purchased from the M/s SCIPL has been used in production garments, which have been exported by the assessee company to various parties.

21. In view of the above pleadings and evidences filed by the assessee the disallowance made in the assessment order and confirmed by CIT(A) is not sustainable on merit. Assessee has proved that the material was purchased from the vendors

involved here and payments have been made through banking channel. Other evidences as referred clearly establish the purchase made by the assessee. We do not want to discuss each and every evidence and it would suffice to hold that in the light of these evidences which have not been rebutted with the help of any cogent material, purchases made by the assessee from the above said vendors cannot be disbelieved. The adverse observations made by the A.O. in the assessment order have been met by the assessee one by one and paper pages 1873-1878 reproduced also above by us and we have taken ourselves to these adverse observations and response of the assessee and we agree with the Ld. Counsel for the assessee that the adverse observations made by the A.O. are not of substance and misplaced on facts. CIT(A) too has mentioned in his order the adverse observations of the A.O. only which in our opinion are misplaced on facts. Contention of CIT(A) that evidence filed by the assessee self-serving documents and circumstantial evidence leads to the conclusion of A.O. It would be enough for us to say that voluminous documentary evidences filed by the assessee are clearly establishing the genuineness of purchases fabric from M/s Super Connection India P. Ltd. & other vendor companies. Other indicators such as percentage ratio of material to sale etc also establish the genuineness of the purchases. We do not agree with the observations made by the first appellate authority. In our considered opinion, assessee has been successful to discharge the burden of

proving the purchase from M/s Super Connection India P Ltd. & other vendor companies. In the result, ground no. 7 to 10 of the assessee's appeal of the assessee are allowed and the aggregate addition of Rs. 7,67,79,726/- is deleted.

22. Ground no. 11 of the assessee's appeal & ground no. (iii) to (viii) of the departmental appeal are in respect of addition of Rs. 4,50,90,494/- made by AO under section 14A out of which a sum of Rs. 72,740/- was confirmed by CIT(A) and on the ground that assessee company has shown dividend income on mutual fund / shares amounting to Rs. 72,740/- and balance was deleted by CIT(A). That is how both have come before us and grievances are covered by the above mentioned grounds of appeal. Assessing Officer at page 37-39 of his order and CIT (A) vide discussion made at page 75-76 of the appeal order discussed the issue.

23. It is seen that there is exempt income only to the extent of Rs. 72,740/- and for this reason also, disallowance under section 14A could not have exceeded this amount in view of the decision of Delhi High Court in the case of Joint Investment Ltd. 372 ITR 694 and hence we uphold the order of CIT(A) to this extent. In the result, ground no. 11 of the assessee's appeal is dismissed and grounds no. (iii) to (viii) of the departmental appeal are also dismissed.

24. Ground no. 12 & 15 of the assessee's appeal are general and do not call for any adjudication under these grounds of appeal here.

25. Ground no. 13 of the assessee's appeal is regarding approval under section 153D but nothing specific submissions have been made before us and hence, the same is rejected& dismissed.

26. Ground no. 14 of the assessee's appeal relating to interest u/s 234B is consequential in nature.

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27. Grounds of appeal preferred by Revenue have been reproduced by above.

28. Ground of appeal no. (i) of Revenue's appeal is in regard to a disallowance of Rs. 16,06,31,683/- made by AO by treating the product development expense as deferred revenue expense which was however deleted by CIT(A).

29. AO has discussed this issue at page 36-37 of the assessment order whereas CIT(A) has discussed this issue at page 73-75 of the appeal order.

30. Ld. CIT (DR) relied upon the findings recorded by AO whereas Ld. Counsel for the assessee has relied upon the findings recorded by CIT(A).

31. We have considered rival contentions and have gone through the orders passed by the lower authorities. This very issue was there in A.Y. 2013-14 & 2014-15 also. It is seen

that CIT(A) has allowed and deleted the addition made by the AO by ITAT's order in assessee's own case in AY 2007-08 & 2008-09 and Order of Hon'ble Delhi High Court in case of the assessee only in ITA 566/2016 and ITA 569/2016 dated 30.9.2016. Since issue involved in the present appeal is identical to the issue involved in the above referred Tribunal's order and order passed by Hon'ble High Court, supra, hence we do not find any infirmity in the order of CIT(A) and hence we dismiss ground no. (i) of the revenue's appeal before us.

32. Ground no. (ii) of Revenue's appeal is in regard to the relief allowed by CIT(A) amounting to Rs. 9,20,23,623/- on account of unexplained cash sales the addition of which was made by AO in his assessment order vide discussion made at page 39-41 of the assessment order whereas CIT(A) has deleted this by making discussion at page 77-78 of the appeal order.

33. Facts leading to the present controversy are that seized document showed the cash sale of scrap and this was so admitted by the director at the time of search on 29.5.2015. Addition was accordingly made by the assessing officer which was however deleted by the first appellate authority.

33. Ld. CIT(DR) relied upon the findings recorded by the assessing officer whereas Ld. Counsel for the assessee relied upon the order of CIT(A).

34. It would be appropriate to reproduce the written submissions filed by the assessee before learned first appellate authority:

It is respectfully submitted that assessee has credited the sales account in its books for this very amount in aggregate on 31.03.2015 and therefore, a separate addition of this amount by Ld. A.O. is nothing but double addition.

PB 1724-1728 is the copy of seized document page nos. 117-121 of Annexure A-8 (Party OS-I), which would show that total amount of sale was to the tune of Rs. 9,20,23,623/-.

PB 28 is the copy of profit and loss account showing local sale to the tune of Rs. 48,43,89,100.30/- which comprises local sale / fabric tax free to the tune of Rs. 17,49,29,197.60/-

PB 1689-1721(n) is the copy of assessee's reply dated 06.12.2017 in which this aspect of double addition was specifically pleading / explained to Ld. A.O. and also explained that the said unaccounted sale has been offered to tax by the assessee.

PB 1721(h)-1721(i) is the breakup of income / local sale of Rs. 48,43,89,100.30/- which further shows that it includes local sale-Fabric tax free of Rs. 17,49,29,197.60/-

PB 1721(j)-1721(n) is the detail of local sale / fabric tax free amounting to Rs. 17,49,29,197.60/- which would

further show that it includes cash sale for the year posted on 31.03.2015 amounting to Rs. 9,20,23,623/-. Therefore, it is more than clear that sale based on the seized document was accounted for as income / sale in the profit and loss account and therefore addition made again by Ld. A.O. become the double addition, which may please be deleted. Ld. A.O. has made certain adverse observations while making the impugned addition which are met as under:-

- 1. Ld. A.O. has mentioned that statement of Sh. Sudhir Dhingra CMD of the appellant company was recorded u/s 132(4) in which he was asked to explain about the sales reflected in the seized documents in reply to which he accepted that the said sale of Rs. 9,20,23,623/- has not been accounted for in the regular books of accounts of the company and it needs to be added to the taxable income of the company. Ld. A.O. has further mentioned that this amount has not been offered to tax separately.*

In reply, it is respectfully submitted that Ld. A.O. has not appreciated the issue involved correctly in as much as when the said amount has been made part of sales and offered as income in the profit and loss account, what does it mean by saying that it has not been shown separately. Even going by the case of Ld. A.O., let us take out the said amount from the credit of profit & loss account and offered it in the computation of income. How does this presentation in this manner going to support the case of Ld. A.O. for making the said addition. Fact of the matter is that such sale made

outside the books of account discovered during the search has been incorporated in a consolidated manner in the books of accounts on 31.03.2015. Therefore, the double addition made by Ld. A.O. for this amount needs to be deleted.

35. We have considered the entire material including the orders passed by the lower authorities and have also taken into account the written submissions made by the assessee before the first appellate authority. It is seen that assessee has taken into account this sale of Rs. 9,20,23,623/- in its profit and loss account and thus the sale of scrap has been considered while working out the result of this year. Separate addition of this very amount would lead to double addition. This was so held by CIT(A) also. We do not find any infirmity in the order of the first appellate authority in this regard and hence dismiss the ground of revenue's appeal and uphold the deletion of the addition of Rs. 9,20.23.623/-. Accordingly, ground of appeal no. (ii) in revenue's appeal is dismissed.

36. Ground no. (iii) to (viii) of the departmental appeal relating to disallowance made u/s 14A have been taken by us along with the assessee's appeal's ground number 11.

Order pronounced in the Open Court on 24th September, 2021

Sd/-

**[Dr. B.R.R. KUMAR]
[ACCOUNTANT MEMBER]**

DATED: 24/09/2021

PKK:

Sd/-

**[AMIT SHUKLA]
JUDICIAL MEMBER**