

**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.3313/DEL/2019
Assessment Year: 2013-2014

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.5040/DEL/2019
Assessment Year: 2013-2014

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. (wrongly mentioned as 30.3.2016 in the appeal order). The grounds of appeal raised by the assessee and by the revenue, respectively are as under:-

1. 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.5,46,18,495/- 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.

2. 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.5,46,18,495/- 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.

3. 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.1,00,59,836/-

on account of alleged unaccounted cash found, 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.

4. 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.39,992/- made by Ld. AO u/s 14A, more so when no incriminating material has been found as a result of search

5. 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.

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 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.

7. 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.

8. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.

Departmental Grounds of Appeal

i) Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in allowing relief of Rs. 12,00,000/- on account of unaccounted cash found during the search proceedings despite the fact that the assessee was unable to explain it.

ii) 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. 20,98,66,789/- made by the AO by ignoring the decision of the Hon'ble Supreme Court in the case of Madras Industrial Investment Corporation Ltd. v. CIT 225 ITR 802.

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 an 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 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 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 any grounds of appeal at the time of hearing.

2. Assessee has filed paper book in one Volume having **Pages 1 to 280**, which were referred by Ld. Counsel on behalf of the assessee 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 6 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 No. 1 & 2 of the assessee's appeal are in respect of disallowance of Rs. 5,46,18,495/- 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 Akanshha Fashion. Assessing Officer at **page 2-17 of his order** held such purchases were not genuine which was upheld by CIT(A) vide discussion made at **page 28-35**.

5. 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 267-274 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 102-103). Ld. CIT(DR) relied upon the findings contained in the assessment and first appellate order.

6. It is seen that page 2-17 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.

7. 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 do not indicate any incriminating material.

8. Arguments were made on the basis of evidences referred at page 267-274 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 Fashion 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 99-101, 97-98, 95-96 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.

9. 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 271-274 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 & 2015-16. Facts are identical in those years also. In the result ground of appeal number 1 and 2 of the assessee's appeal of the assessee are allowed and the addition of Rs. 5,46,18,495/- is deleted.

10. Ground no. 3 of the assessee's appeal is in regard to the addition of Rs. 1,00,59,836/- made by AO and confirmed by CIT(A) and ground no. (i) of the departmental appeal is against the addition of Rs. 12,00,000/- on account of cash made by AO by deleted by CIT(A). AO has discussed these

issues at page 17-18 of the assessment order whereas CIT(A) has discussed these issues at page 35-38 of the appeal order.

11. Ld. Counsel for the assessee submitted that it was so explained during the course of the assessment proceeding also that the cash found during the course of search for which addition has been made in the assessment order, should be telescoped against the cash scrap sale of 9.20 crore offered to tax in previous year relevant to A.Y. 2015-16 whereas Ld. CIT (DR) relied upon the orders passed by the lower authorities.

12. We have considered the rival submissions. It is seen that an aggregate amount of 1,12,59,836/- has been added as unexplained cash by the assessing officer which were found in excess than the cash in hand being shown in the books of accounts. We have seen the assessment order for AY 2015-16 also wherein an addition of Rs. 9,20,23,623/- was made in respect of scrap cash sale which was however deleted by CIT(A) in that year on appeal, on the ground that the cash scrap sale has been accounted for by the assessee as its sale and offered to tax as part of total sale in the return of income filed for A.Y. 2015-16. It is seen that this cash sale of scrap offered to tax in AY 2015-16 is available with the assessee company and it is quite reasonable that the cash found on the date of search may be treated to be covered by such cash sale of scrap. Revenue has not been able to show us the application of cash scrap sale of Rs. 9,20,23,623/- either in

AY 2015-16 or AY 2016-17. Hence to telescope the cash found in the year under appeal before us amounting to Rs. 1,12,59,836/- against the cash sale of scrap of Rs. 9,20,23,623/- of AY 2015-16 has to be granted to the assessee on consideration of the totality of facts and circumstances of the case. Not to grant the telescoping in this fact situation would amount to double addition in the hands of the assessee which is not permissible in law. Therefore, we delete the addition of Rs. 1,12,59,836/- and allow the appeal of the assessee in this regard and dismiss the revenue's appeal.

13. Ground No. 4 of the assessee's appeal and ground no. (iii) to (viii) of the departmental appeal are in respect of addition of Rs. 4,31,36,260/- made by AO under section 14A out of which a sum of Rs. 39,992/- was confirmed by CIT(A) and on the ground that assessee company has shown dividend income on mutual fund / shares amounting to Rs. 39,992/- 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 20-21 of his order and CIT(A) vide discussion made at page 38-40 of the appeal order discussed the issue.

14. It is seen that there is exempt income only to the extent of Rs. 39,992/- 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. 4 of the assessee's appeal is dismissed and grounds no. (iii) to (viii) of the departmental appeal are also dismissed.

15. Ground no. 5 & 7 of the assessee's appeal are general and do not call for any adjudication under these grounds of appeal here.

16. Ground no. 6 of the assessee's appeal relating to interest u/s 234B is consequential in nature.

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

18. Ground of appeal no. (i) of Revenue's appeal is against the relief of Rs. 12,00,000/- allowed by CIT(A) in respect of the cash found at the time of search. This issue has been dealt by us while disposing the assessee's appeal ground no. 3.

19. Ground of appeal no. (ii) of Revenue's appeal is in regard to a disallowance of Rs. 20,98,66,789/- made by AO by treating the product development expense as deferred revenue expense which was however deleted by CIT(A).

20. AO has discussed this issue at page 19-20 of the assessment order whereas CIT(A) has discussed this issue at page 18-19 of the appeal order.

21. 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).

22. 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 & 2015-16 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.

23. 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 4.

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**