

**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.3310/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.5037/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. The grounds of appeal raised by the Revenue and by the assessee, respectively are as under:-

- (i) *Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 17,992/- made by the AO on account of bogus expenses placing reliance on the documents furnished by the assessee which failed to prove that the expenditure was incurred wholly and exclusively for the purpose of business.*
- (ii) *Whether on the facts and circumstances of the case, the Ld. CIT(A) has failed to appreciate that the onus to prove that the expenses of Rs. 17,992/- have been incurred for the services rendered by the proprietary concern M/s Aam Bee Clothing (Prop. Smt. He ma Sharma) is on the assessee company.*
- (iii) *Whether on the facts and circumstances of the case, the Ld. CIT(A) failed to appreciate that at the time of search no evidence was found to prove that the expenses incurred in respect of fabrication job alleged to be undertaken by M/s AamBee Clothing.*
- (iv) *Whether on the facts and circumstances of the case, the Ld. CIT (A) has erred in deleting the addition of Rs.25,58,77,724/- made by the AO on account of deficit on settlement of forward contracts (Net) which is a speculation loss under the provisions of section 43(5) of the Income Tax Act, 1961 without appreciating the facts of the case.*
- (v) *Whether on the facts and circumstances of the case, the Ld. CIT (A) has erred in deleting the disallowance of product development expenses Rs.11,63,14,122/- 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 225ITR 802.*
- (vi) *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.*

(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 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] 326ITR 1 (SC) that expenses allowed can only be in respect of earning of taxable income.

(viii) 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.

(ix) 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".

(x) 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.*

*(xi) 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 ".*

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

**Assessee's Grounds of Appeal:-**

*“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 assuming jurisdiction u/s 153A and further erred in passing the impugned assessment order.*

*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 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.*

*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 disallowance of Rs.115,28,15,940/- and that too on the ground that impugned loss did not relate/accrued for the year under appeal.*

4. That in any case and in any view of the matter, Ld. CIT(A) ought to have given direction to allow the loss amounting to Rs.115,28,15,940/- in AY 2009-10 to 2012-13.

5. That in any case and in any view of the matter, action of Ld. CIT(A) in sustaining the disallowance to the extent of Rs.115,28,15,940/-, 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.1,29,01,751/- allegedly on account of bogus expenses claimed with respect to M/s Sai Export, 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.1,29,01,751/- allegedly on account of bogus expenses claimed with respect to M/s Sai Export, 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 disallowance of Rs.6,41,39,357/- 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.

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 disallowance of

Rs.6,41,39,357/- *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.*

10. *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.10,18,44,865/- 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.*

11. *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.10,18,44,865/- 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.*

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 making addition of Rs.17,87,17,045/- 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.*

13. *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.17,87,17,045/- 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.*

14. 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.85,656/- made by Ld. AO u/s 14A, more so when no incriminating material has been found as a result of search

15. 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.

16. 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.

17. 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.

18. 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.”

2. The Assessee has filed paper book in 10 Volumes having Pages 1 to 3089, which were referred by Ld. Counsel for the assessee extensively during the course of hearing of the above appeals including the written submissions made before the first appellate authority which is part of the paper book. Brief synopsis has also been filed by Ld. Counsel for the assessee in both the appeals running into 11 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. Ld. Counsel for the assessee argued Ground No. 1, 2 and 15 and argued that the assessment order was passed u/s 153A even though there was no incriminating material found during the course of search for the impugned assessment year. This argument of the assessee was raised before Commissioner of Income Tax (Appeal) also but Commissioner of Income Tax (Appeal) did not agree with this argument and the relevant findings of Commissioner of Income Tax (Appeal), is at page-57 of the Appeal order dated 30.03.2019. Before us, Ld. Counsel for the assessee relied upon his submission filed before Commissioner of Income Tax (Appeal) which is at page 2958 to 2959.

5. Ld. CIT DR relied upon the findings recorded by Commissioner of Income Tax (Appeal) and also relied upon the assessment order.

6. We have considered the rival contention and have taken ourselves to the assessment order, the appeal order and the paper book pages referred by Ld. Counsel. It is seen that return was filed originally by the assessee on 29.11.2013, which is at page-1 of the paper book and date of search is 29.04.2015. Since in this case search has taken place u/s 132, preceding six year assessments preceding from the date of search i.e. 29.04.2015 are to be done u/s 153A and accordingly assessment for A.Y. 2013-14 was also made u/s 143(3) / 153A. Therefore, we do not find merit in this

contention for Ld. Counsel for the assessee. However, whether there was incriminating material found in respect of each of additions / disallowances made in the assessment order as per the arguments raised by Ld. Counsel may be relevant and we would consider this argument while discussing and adjudicating the grounds of appeal involving various additions / disallowances. Accordingly these grounds of appeal are disposed of accordingly.

7. Next grounds i.e. Ground No. 3, 4 and 5 of the assessee's appeal and Ground No. (iv) involved in the assessee's appeal are against the disallowance of Rs. 1,15,28,15,940/- out of total disallowance of Rs. 140,86,93,664/- made by the A.O. on the ground that the loss claimed by the assessee did not relate / accrue for the year under consideration, whereas the departmental grounds of Appeal No. iv was against the relief of Rs.25,58,77,724/- allowed by Commissioner of Income Tax (Appeal).Total amount involved in both the appeals in this regard aggregate to Rs. 140,86,93,664/-. Since the issue involved in both the appeals is interlinked with each other therefore, assessee's grounds of appeal No. 3, 4 and 5 and revenue grounds of Appeal No. iv in para 4 are taken up together.

8. Assessing Officer in his order at page 36-39 has dealt this issue according to which loss with Barclays Bank arising in respect of derivative foreign currency and derivative transaction is a speculative loss not being the loss of business and further that the loss did not relate to the year under appeal but it related to A.Y. 2009-10 to 2013-14. CIT(A) at page 81-90 of the appeal order has discussed this issue and have held that out of the total loss of Rs. 140,86,93,664/- loss of Rs.25,58,77,724/- related to the year under appeal and thus is allowable and the balance was not

allowable. Ld. First appellate authority however held that the loss in question is not speculative loss. Since Commissioner of Income Tax (Appeal) allowed the part relief to the assessee, both i.e. the assessee and revenue are in appeal before us.

9. During the course of hearing, the assessee relied upon his submissions made at page 2292 to 2995, 3001 to 3045 and 3046 to 3089 of the paper book and the submissions made thereunder. On the other hand, CIT DR relied upon the assessment order passed by the Assessing Officer and relied upon CIT(A) Order in so far as disallowance was confirmed by CIT(A). As to the relief of Rs. 25,58,77,724/- allowed by CIT(A), CIT DR argued that the relief allowed by CIT(A) was not correct, as the loss cannot be said to be business loss and loss cannot be said to be the loss of the present year involved in the appeal.

10. We have heard the rival submissions and have gone through the assessment order and CIT(A)'s order. We have taken into account the arguments advanced on both the sides and have referred to the paper book filed by the assessee. As to the incriminating material found as a result of search, it is seen that foreign currency derivative contracts documents were found and seized as mentioned in the assessment order and therefore, we are not inclined to agree with Ld. Counsel that the present disallowance could not be considered in the assessment made u/s 153A. That leaves us to dispose the grounds involved in both the appeals to be adjudicated on merit.

11. It was submitted on behalf of the assessee that assessee is an exporter of readymade garments and home furnishing items. It also imports from outside India and has raised foreign currency loans on interest, for its working capital requirements. It is

therefore exposed to foreign currency exchange fluctuation risks in all the above mentioned transactions. To safeguard itself from the foreign exchange fluctuation risks, it enters into with different banks, foreign currency forward contracts, foreign currency futures, swaps and foreign currency option contracts. It was further submitted that the all the above contracts are entered into with prior approval of the RBI and in consonance with the conditions set out in RBI's Master Circular No. 06/2007, dated 01.07.2006 as per which hedging of an exposure to foreign exchange risk is allowed in the presence of underlying exposure to the foreign currency transaction. Forwards/Option contracts are thus, as was submitted on behalf of the assessee, booked on a one to one basis in relation to the exposures and also on estimate basis based on previous three years' performance. It was also submitted that the assessee Company has also entered into cross currency option contract in alignment with FEDAI Regulation No. 578/FECX/ SPL-37/95 dated 24th March, 1995, hedging its foreign currency receivables and payables against any permitted third currency and that the entire cross currency hedging contracts had underlying exposure. It was submitted that the cross currency contract was entered into by the Company with Barclays Bank and entailed a USD call for 7,50,000 against put of JPY and CHF based on an agreed level and further that the initial agreement entered into on 19.04.2007 was for a period of 60 months allowing the cross currency hedging contracts up to a fixed level only, with no cap on losses. The contract was to be settled only on expiry of the contract. No premature cancellation of any forward contract is there. It was also brought on record that in January 2008, the USD started weakening and after Lehman crisis when the currencies in question namely JPY (Japanese Yen) and

CHF (Swiss Francs) had started appreciating against the USD and there was panic in the market, the contract was restructured in the month of January 2008 and March 2008 incorporating the following conditions:-

- a) Delinked the movement of currency namely JPY and CHF. The payout was restricted to USD 4,69,000 per month and funding of the same on the appointed date of every month.
- b) 60 months period of the contract, to commence from 23.01.2008.
- c) The cap on Points reduced from 80 to 78 (balance 5.99 big figures is to be achieved) on achieving which, all money paid by the company will be refunded back to the company.

12. It was submitted by Ld. Counsel that the assessee company had accounted for the aforesaid payouts as "Advance" in the books of account and as on 22nd January 2013 the amount appearing as at Rs. 140 crore odd amounts. In the Financial year 2012-13 the entire amount was charged to the profit and loss account. During the financial year 2012-13 the entire amount was charged to the Profit and Loss account as business loss since the period as per the agreement has expired in the month of January 2013 & March 2013 as the designated levels as stipulated in the agreement could not be reached and it was the date of ascertainment of the actual loss. Thus Ld. Counsel made out a case that the loss was not speculative loss and in any case, the liability has crystallized in the year before us and hence entire loss was the loss of the year under appeal. Ld. Counsel relied upon several judicial decisions for the above two propositions to which we would make reference later. It was thus argued by Ld. Counsel

that the loss was not speculative but normal business loss and was also the loss of the year under appeal. It was also submitted alternatively that in any case the tax rates have remained same in different years, hence claiming of the loss in later year is something which has been accepted in identical cases by the Courts. He relied upon judicial decisions for this proposition of law also. On the other hand, Ld. CIT(DR) relied upon the findings recorded by the assessing officer and revenue favoring findings recorded by CIT(A)'s order. It was her submission that the disallowance made by AO be restored / confirmed in its entirety.

13. We have seen the explanation of the assessee as to the nature of impugned loss and its nexus with the business carried on by the assessee placed at paper book page 325 to 424. We have considered the reply of the assessee placed at page 358 to 362 of the paper book, details of profit/loss on account of currency fluctuation at page 363 of the paper book, summary of all derivative contract, foreign bill negotiated along with the export sales placed at page 364 of the paper book, details of difference in exchange-derivative contract and premium/discount on the contracts placed at page 365-376 of the paper book and copy of original and restructured agreements of derivative contracts between the assessee and M/s Barclays Bank placed at page 381 to 415 of the paper book and settlement advices for derivative contracts with above said bank placed at page 416-424 of the paper book. It is seen that the derivative contracts were entered by the assessee in the course of carrying on its business of exports of garments so that the risk of foreign exchange fluctuation losses in respect of export & import transactions may be reduced. Also, there are interest liability on working capital foreign currency

loans and repayment of such working capital loans. Thus, the loss incurred by the assessee company were in respect of the forward contracts entered into by the assessee company during the course of carrying on its business and thus these are the normal business losses of the assessee company. These were hedging against the exposure to foreign exchange risk present in the underlying business contracts. Learned first appellate authority also has discussed this issue at great length in its order of appeal and has held that such loss is in the nature of business loss and is not speculation loss. He has relied upon the order passed by his predecessor in assessee's own case in earlier years viz. AY 2010-11 to 2012-13 and extensively extracted from such order of AY 2011-12 passed by his predecessor. It has not been shown to us as to why such loss is not normal business loss in the facts and circumstances of the present case when assessee is exporter of ready-made garments and home furnishings, imports from outside India and has raised foreign currency loans and is exposed to foreign currency exchange fluctuations. Hedging contracts entered into are not considered speculation and specific exclusion has been given under section 43(5) of the Income Tax Act in this regard. Turnover the assessee is to the tune of Rs. 1157.57 crores which comprises mainly the exports turnover. We have seen the case laws relied upon by Learned counsel for the assessee- CIT vs. Soorajmull Nagarmull 129 ITR 169(Cal), CIT vs. Badridas Gauridu 261 ITR 256 (Bom), Friends and Friends Shipping P Ltd 217 Taxman 267 (Guj) in which it has been held that foreign exchange loss which is incidental to business of export/import is not speculative loss to which we too respectfully rely upon. Therefore, it is held that the impugned loss which is the subject matter of the present appeal is integral to the main business of the assessee and

has been incurred in respect of the contracts entered into to safeguard the foreign exchange proceeds on export or foreign exchange payments in respect of the imports and other payables from exchange fluctuation loss and is thus not speculative loss but is normal business loss which is liable to be set off as per the provisions of the Income Tax Act.

14. Regarding the other aspect of the present controversy as to whether such loss is the loss of the year under appeal or not, It is seen that the restructured contract was entered into January 2008 and March 2008 according to which 60 months payout was fixed at 4,69,000 \$ per month which could be refunded to the assessee if the assessee company was able to achieve the designated level of 5.99 points on any fixing date as agreed till the expiry of the agreement. Since the agreement came to an end in Jan 2013 and March 2013 and agreed level could not be achieved and hence, as per the agreement the loss had crystallized on the expiry of the period of 5 years which fell in the year before us and hence the loss booked by the assessee is the loss of the year under appeal. Merely because the loss has got some connection with earlier year(s), it does not make the loss as the loss of those years. All that has to be seen the precise point of crystallization of the event leading to the loss which in our considered opinion fell in the year before us and hence the loss is the loss of the year under appeal. We respectfully also follow the judicial decisions relied upon by the learned counsel in the written submissions placed at page 3003-3005 of the paper book i.e. CIT vs. West Chusick Coal Co. Ltd. 129 ITR 62 (Cal), Metal Box Co of India Ltd. vs. Their workmen 73 ITR 53 (SC) which lay down the guiding principles as to when a loss can be said to have been incurred. Thus, even on this score the

loss which is the subject matter of appeal before us is the loss which is allowable in the previous year relevant to AY 2013-14.

15. Thus on the totality of the facts and circumstances of the case, we hold that the addition made by the assessing officer aggregating to Rs. 140,86,93,664/- and involved in assessee's appeal and appeal of the revenue is decided in favor of the assessee. Grounds of appeal of the assessee's appeal numbering 3 to 5 are allowed and ground of appeal number (iv) of Revenue's appeal is dismissed.

16. Ground No.6 and 7 of the assessee's appeal are in respect of addition of Rs. 1,29,01,751/- 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 Sai Exports. Assessing Officer at page 5-13 of his order held such expense as bogus which was upheld by CIT(A) vide discussion made at page 58-64.

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 and the return of income having been filed on 29.11.2013 and the assessment of the year under appeal was one which had attained finality on the date of search and therefore in view of the decision of **CIT vs. Kabul Chawla 380 ITR 573 (Delhi); and Principal CIT vs. Best Infrastructure India P. Ltd. in ITA No. 11-22/2017 dated 01.08.2017** the disallowance could not have been made. Further, it was submitted by the Ld. Counsel with the help of various evidences referred at page 2966 to 2968 of the paper book and it was argued that M/s Sai Export 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. Ld. Counsel also took us through the adverse observations made by CIT(A) in his order and the assessee's reply thereto as contained at page 2-4 of the synopsis filed before us. Ld. Counsel referred the written submissions filed before the first appellate authority and various pages referred therein. On the other hand, Ld. CIT(DR) relied upon assessment order and the order of the first appellate authority.

18. We have considered the entire material before us and it is seen that paged 5-13 of the assessment order does not refer any incriminating material found as a result of search in respect of job work of M/s Sai Export which was the proprietary concern of Sh. Mohinder Kumar Garg. Only evidence which has been referred in the assessment order was the statement of Sh. Mohiner Kumar Garg in which he stated that since April, 2014 he was working as production consultant with assessee company and earlier he was regular employee of the assessee company 01.01.1997 to 30.09.2013 and that books of accounts of M/s Sai Exports was found being maintained on a computer at D-3, Sector-59, Noida premises covered u/s 133A of the I.T. Act and it was further found that Sh. Rajiv Poddar who was working as an accountant of M/s Orient Craft Ltd. was also found to be maintaining the books of accounts of M/s Sai Exports on the direction of Seniors of M/s Orient Craft Ltd. and that during the course of survey proceedings Sh. Rajiv Kumar Poddar was unable to provide any details regarding work done by M/s Sai Exports for the assessee and he

was also unable to produce any copy of vouchers, challans and goods sent for job work for M/s Sai Exports. During the course of survey, statement of Sh. Pawan Arya of M/s Orient Craft Ltd. was also recorded on oath in which he stated that M/s Sai Export used to do some job work for M/s Orient Craft Ltd. but he was unable to furnish any particular detail and he was even unable to name of the owner and address of M/s Sai Export and further that auditor of Sh. Mohinder Kumar Garg and the assessee company with the same.

19. In our considered view that from the findings recorded in the assessment order even if they are taken as correct though it has been contested by the assessee, 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 Sai Export. We have gone through the statement of Mr. Mohinder Kumar Garg and we do not find anything adverse even in the statement of Sh. Mohinder Kumar Garg proprietor of M/s. Sai Exports. Even otherwise, the statement cannot be regarded as incriminating material as held by Delhi High Court in the case of Principal CIT vs. Best Infrastructure India P. Ltd. in ITA No. 11-22/2017 dated 01.08.2017. Even the survey proceeding referred in the assessment order do not indicate any incriminating material and in any case anything found during the course of survey cannot be said to be any material found during the course of search. Finding of books of account of M/s Sai Export at the premises of the assessee cannot be taken as the adverse material more so when it has been the case that M/s Sai Exports was doing substantial for job work of the assessee company only. Therefore, we agree with the argument of Ld. Counsel that the impugned disallowance

could not be made in the assessment Order passed u/s 153A / 143(3) as the return having been filed on 29.11.2013 has attained finality. Therefore in view of the decision of Hon'ble Delhi High Court in the case of **CIT vs. Kabul Chawla 380 ITR 573 (Delhi)** the impugned addition is liable to be deleted and is deleted on this ground itself.

20. But since CIT(A) has discussed the impugned disallowance on merit also and arguments were made by the assessee on the basis of evidences referred at pages 2965 to 2968 of the paper book, we deem it appropriate to deal with the disallowance on merit also. It would be appropriate to reproduce the written submission filed by the assessee before the first appellate authority on merit:

21. It was submitted that appellant is engaged in the manufacturing and export of readymade fashion garments mainly to USA and Europe. Garment production process involves several steps, which are listed at page 7-8 of the assessment order. M/s Sai Export was one of the job workers engaged by the appellant for doing various job work such as bundling, cutting, stitching, thread cutting, finishing etc., which are integral part of the garments manufacturing. It is submitted that the said job worker has performed the said job work activities on the garments manufactured by the appellant without which it was not possible to manufacture the garments and accordingly export sales could not be possible. Various documentary evidences were filed vide letter 01.12.2017, which are enclosed in the paper book at (PB 598-907) by the assessee during the course of assessment proceeding to prove the engagement of the said job worker, Job work carried out by the said job worker, quantitative reconciliation

and direct correlation of the job work charges paid with the production/ sales. Copies of invoices raised by the job worker were also filed on specimen basis (PB 858-865). The payments were made through account payee cheques as is evident from the copy of account of the job worker place at (PB 866-878) and copies of bank books were also filed (PB 879-892), tax was deducted at source and TDS accounts were filed PB 893-900 & 901 Voluminous documents proving the existence and job work carried out by M/s Sai Exports were filed by the assessee along with its reply dated 01.12.2017 filed to Ld. A.O. (PB 598-907).

22. In fact following pleadings and documentary evidences were filed to Ld. A.O. during the course of assessment proceeding, which establish the genuineness of the M/s Sai Exports and job work carried out by the said firm for the appellant company.

PB 157-179, 606-634 is the Copy of income tax return, computation of income, Audited Balance sheet, Profit & Loss account and Tax audit report for A.Y. 2013-14 of the job worker M/s Sai Exports.

PB 234-255 are the copies of statements of Mr. Mohinder Kumar Garg, and Mr. Rajiv Poddar recorded during the survey which establish that job work was being done by M/s Sai Exports.

PB 598-605 is the copy of letter dated 01.12.2017 filed by the assessee to Ld. A.O. explaining in great details about the job work expenses incurred and paid to M/s Sai Exports.

PB 635-657 is the Sample copy of Muster roll of all the employees employed by the firms for 2 months for all the respective years under consideration.

PB 658-740 is the Sample copy of Salary sheet for 2 months of the year under consideration of payment of wages on sample basis.

PB 741-771 is the Sample copy of Bonus register maintained as per requirement of 'The payment of Bonus Act' showing actual payment proof of bonus to employees.

PB 772-777 is the Sample copy of Leave register maintained as per legal requirement.

PB 778-795 is the copy of Month wise PF / ESI deduction and deposit along with sample copy of 2 months challans for each year along with ledger account of PF.

PB 800 is the Copy of Licence for registration u/s 6 of the Factory Act and approval of factory building plan.

PB 807 is the copy of Pollution certificate from Noida Authorities.

PB 826-845 is the copy of Rent Agreement along with complete ledger account of Rent for all the years under consideration

PB 846-857 is the copy of Sample copy of electricity bills in the name of Landlord M/s Grandways Electronics Pvt. Ltd along with ledger account of electricity all respective years .

PB 858-865 Copy of invoices raised by M/s Sai Export for the job work charges in the name of the appellant company.

PB 866-892 is the Copy of complete Bank statement along with complete bank book for all respective years.

PB 893-900 is the copy of ledger account of M/s Sai Exports together with copy of bank book showing that the payments were made through account payee cheques, TDS deducted.

PB 901 is the copy of TDS returns showing the names of the job workers and copies of Form No. 26AS.

PB 906-907 & 902-905 is the copy of ledger account of M/s Sai Exports in the books of assessee's company & vice versa, which shows that job work activities done by the said job worker during the year under appeal.

PB 879-892 is the copy of bank book of M/s Sai Export in the books of appellant to show that payment has been made through account payee cheque for fabrication charges paid to the said job worker.

PB 1307-1337 is the Copy of income tax return, computation of income, Audited Balance sheet, Profit & Loss account and Tax audit report for A.Y. 2012-13 of the job worker M/s Sai Exports, which are already enclosed in the paper book for A.Y. 2012-13 in assessee's own case.

PB 4730-4755 is the Copy of income tax return, computation of income, Audited Balance sheet, Profit & Loss account and Tax audit report for A.Y. 2011-12 of the job worker M/s Sai Exports, which are already enclosed in the paper book for A.Y. 2011-12 in assessee's own case.

PB 4756-4757 is the copy acknowledgment of return and computation of income for A.Y. 2010-11 of the job worker M/s Sai Export, which is already enclosed in the paper book for A.Y. 2011-12 in assessee's own case.

23. Ld. Counsel thus submitted that above evidences clearly speak for the genuineness of the charges incurred by the appellant company to the job worker involved and therefore, it is prayed that the disallowance made by Ld. A.O. by treating such job work charges as not genuine may please be deleted.

24. Certain adverse observations have been made by Ld. A.O. for making the impugned disallowance hence it is necessary to meet although adverse observations as under:-

1. Ld. A.O. has mentioned at page 5, 6 & 7 of the assessment order that Sh. Mohinder Kumar Garg prop. of M/s

Sai Exports admitted in his statement recorded u/s 132(4), that he was working as production consultant since April, 2014 and was regular employee for M/s Orient Craft Ltd. (OCL) from 01.01.1997 to 30.09.2013.

In reply, it was submitted that there is no denial or prohibition for one not to engage himself in business venture while working. Rather as an employee the job worker acquired the required skill over the years, which he thought to exploit to his advantage. Therefore, there is nothing wrong in Mr. Mohinder Kumar Garg doing the business of job work beside being employee of the appellant company.

2. Ld. A.O. has mentioned that books of accounts of M/s Sai Exports were found maintained on computer at the premises of M/s OCL and such books of accounts were being maintained by one Sh. Rajiv Poddar who was also accountant of M/s OCL.

In reply, it was clarified that these books were brought for reconciliation purpose since there were voluminous transactions. Since Mr. Rajiv Poddar who was the accountant of M/s OCL was to reconcile the accounts, that is why copy of books of account of M/s Sai Exports was found.

3. Ld. A.O. has mentioned that Sh. Rajiv Kumar Poddar was maintaining books at the direction of seniors and he was unable to provide details regarding the work done by M/s Sai Exports for the appellant company and he was also unable to produce any vouchers, challans, and goods sent for job work for M/s Sai Exports.

In reply, it has been stated that as explained earlier books of accounts were found on the computer for the purpose of reconciliation of accounts. Mr. Poddar's statement was not supplied to the appellant nor was he produced for our cross examination and therefore any evidence collected at the back of the assessee and that too without cross examination cannot be relied upon. It is wrong that Mr. Poddar was maintaining the books of accounts on the directions of his seniors. Since Mr. Poddar was not maintaining the books of accounts as such of M/s Sai Exports obviously he could not have provided any details regarding the work done by M/s Sai Exports or could have produced vouchers etc. of M/s Sai Exports. Fact of the matter was that during the course of assessment proceedings such voluminous evidences were furnished to Ld. A.O. as explained above which establishes the fact of the job work being carried out by M/s Sai Exports for the appellant company.

4. Ld. A.O. has mentioned that in his statement recorded during the course of survey Sh. PawanArya AVP, Production of the appellant company could not furnish any particular details of the job work done by M/s Sai Exports nor could he tell the name of the owner or address of M/s Sai Exports.

In reply, it was submitted that for a person of the stature of vice president, it is not possible to know the name & address of all job workers. It is not clear even from the observation of Ld. A.O. as to which particular detail could not be explained by Mr. PawanArya. According to Ld. A.O. himself, Mr. PawanArya mentioned that he knew Sh. Mohinder Kumar Garg as production head. It is relevant to submit at this stage

that Mr. Mohinder Kumar Garg on the date of survey i.e. 29.04.2015 was also working as production consultant. Therefore, there is no contradiction or inconsistency in this regard as is sought to be made out by Ld. AO.

5. Ld. A.O. has mentioned that Auditor of M/s Sai Export is M/s V.K. Dhingra & co. who happens to be Auditor of the appellant company also.

In reply, was submitted that this objection of Ld. A.O. also does not have substance as this is the contractual arrangement between M/s. Sai Export and M/s V K Dhingra & Co. and also due to constant personal touch of the auditor, if that very audit firm is engaged by the business constituent, there is nothing unusual.

6. Ld. A.O. has mentioned that statement of Sh. Mohinder Kumar Garg was recorded during search in which he admitted that all the payments to the workers of M/s Sai Exports were made after withdrawing cash from the bank account of M/s Sai Exports and that he could not explain as to how such large number of workers which were more than 500 in numbers were recruited and that M/s Sai Export did not have any machinery of its own and most of the plan and machinery was owned by M/s OCL.

In reply, it is submitted that even these objections of Ld. A.O. are superficially made and appeared to have been made for the sake of making. If workers have to be paid, obviously they have to be paid in cash as workers are not men of means. Engagement of workers is done through various modes and means. Work force in NCR region is available on their own as

workers assemble outside the factory gates for seeking employment as can be seen from the bare perusal of such scenes outside the factory gates. Therefore, the reply of Sh. Mohinder Kumar Garg in this regard was not something which was impossible or improbable. It was part of contractual arrangement of the appellant with M/s. Sai Export that plant and machinery will be supplied by the appellant company for maintaining the quality standards and avoiding the wastages. Therefore, there is nothing unusual in this regard.

25. In fact the detailed reply was filed by the assessee in response to the questions raised by Ld. A.O., which is enclosed in the paper book at PB 598-605 along with all the annexures at PB 606-907 and which has been reproduced also at page 5-13 of the assessment order.

26. It is seen from the evidences placed before us and relied upon by Ld. Counsel for the assessee that the job worker M/s Sai Export has raised invoice and payment have been made through account payee cheques and tax having been deducted at source and documents at page 598 to 907 of the paper book establish the existence of the job worker and the job work carried out by M/s Sai Exports. We have also seen the statement of Mr. Mohinder Kumar Garg and Sh. Rajiv Poddar placed at page 234 to 255 of the paper book, which also establish the job work done by M/s Sai Export. We have also referred to sample copy of muster roll of the all the employees, employed by the job worker for two months for all the years involved and so have we seen salary sheet for two months on sample basis, on account of payment of wages. Similarly pages 741 to 771 is the sample copy of bonus register

showing actual payment proof of bonus to the employees of job workers and paper book page 772 to 777 is the sample copy of Leave register of the employee of the job workers. Similarly paper book page 778 to 795 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 800 to 807, 826-845, 846-857, 858-865, 866-892, 893-900, 901, 906-907, 902-905, 879-892, 1307-1337, 4730-4755 are of M/s Sai Export and filed the return of income of prior years. All these evidences clearly establish that genuineness of job work charges incurred by the assessee company through M/s Sai Export and therefore the disallowance made in the assessment order and confirmed by CIT (A) is not sustainable even on merit. The adverse observations made by the A.O. in the assessment order have been met by the assessee one by one and paper pages 2969 to 2972 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.

27. 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. that Sh. Mohinder Kumar Garg was an old employee of the assessee company cannot take the case of revenue anywhere. It would be enough for us to say that voluminous documentary evidences filed by the assessee & considered by us are clearly establishing the genuineness of the job work expenses

incurred in relation to M/s Sai Exports. In the face of above mentioned direct documentary evidences, how can the so called circumstantial evidences be relied. Documentary evidences filed by the assessee before the lower authorities which have been referred by CIT(A) at page 60 of his appeal order to which reference has also been made in the written submissions filed by the assessee and to which our attention was drawn clearly establish & mentioned by us above that job work expense claimed by the assessee to have been paid to M/s Sai Exports are quite genuine and established. In the result, the grounds of appeal in the appeal of the assessee are allowed & the addition of Rs. 1,29,01,751/- is hereby deleted.

28. Ground No. 8 and 9 of the assessee's appeal are in respect of disallowance of Rs. 6,41,39,357/- 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 13-15 of his order held such expense as bogus which was upheld by CIT(A) vide discussion made at page 64-69.

29. 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 and therefore the assessment of the year under appeal was one which had attained finality and therefore in view of the decision of CIT vs. Kabul Chawla 380 ITR 573 (Delhi) and Principal CIT vs. Best Infrastructure India P. Ltd. in ITA No. 11-22/2017 dated 01.08.2017 the disallowance could not have been made. Further, it was submitted by the Ld. Counsel with the help of various evidences referred at page 2974 to 2976 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.

30. 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 13-15 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.

31. From the findings recorded in the assessment order even if they are taken as correct, 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 and statements in any case cannot be regarded as incriminating material as held by Delhi High Court in the case of Principal CIT vs. Best Infrastructure India P. Ltd. in ITA No. 11-22/2017 dated 01.08.2017. Even the survey proceeding referred in the assessment order do not indicate any incriminating material and in any case anything found during the course of survey cannot be said to be any material found during the course of search. 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. Therefore, we agree with the argument of Ld. Counsel that the impugned disallowance could not be made in the assessment order passed u/s 153A / 143(3) as the return having been filed on 29.11.2013 has attained finality. Therefore in view of the decision of Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla 380 ITR 573 (Delhi) the impugned addition is liable to be deleted and is deleted on this ground itself.

32. But since CIT (A) has discussed the impugned disallowance on merit also and arguments were made on the basis of evidences referred at page 2972 to 2978 of the paper book, we deem it appropriate to deal with the disallowance on merit also. At this

stage, it would be appropriate to reproduce the written submissions filed by the assessee before the first appellate authority so that the evidences may be appreciated in this regard:

33. It has been submitted that appellant in engaged in the manufacturing and export of readymade fashion garments mainly to USA and Europe. Garment production process involves several steps, which are listed at page 7-8 of the assessment order, Shri Ram Export was one of the job worker engaged by the appellant for doing various job work such as bundling, cutting, stitching, thread cutting, finishing etc., which are integral part of the garments manufacturing. It is submitted that the said job worker has performed the said job work activities on the garments manufactured by the appellant without whom it was not possible to manufacture the garments and accordingly export sales could not be possible. Various documentary evidences were filed vide letter 01.12.2017, which are enclosed in the paper book at (PB 598-605 & 908-1613) by the assessee during the course of assessment proceeding to prove the engagement of the said job worker, Job work carried out by the said job worker, quantitative reconciliation and direct correlation of the job work charges paid with the production/ sales. Copies of invoices raised by the job worker were also filed on specimen basis (PB 1532-1549). The payments were made through account payee cheques as is evident from the copy of account of the job worker place at PB1550-1558 & 1565-1577 and copies of bank books were also filed (PB1559-1564 & 1578-1584). Tax was deducted at source by appellant company reflected in 26AS of Prop. Sh. Subhash Chand Gupta at (PB 1585-1589). Voluminous documents proving the existence and job work carried out by Shir Ram Exports were filed by the

assessee along with its reply dated 01.12.2017 filed to Ld. A.O. (PB 598-605 & 908-1613).

34. In fact following pleadings and documentary evidences were filed to Ld. A.O. during the course of assessment proceeding, which establish the genuineness of the Shri Ram Exports and job work carried out by the said firm for the appellant company.

PB 598-605 is the copy of letter dated 01.12.2017 filed by the assessee to Ld. A.O. explaining in great details about the job work expenses incurred and paid to Shri Ram Exports.

PB 180-200, 908-928 is the Copy of income tax return, computation of income, Audited Balance sheet, Profit & Loss account and Tax audit report for A.Y. 2013-14 of the job worker Shri Ram Exports.

PB 929-1081 is the Sample copy of the relevant documents from the Worker's personal Files such as Adhar 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.

PB 1082-1141 is the Sample copy of Muster roll of all the employees employed by the firms for 2 months for all the respective years under consideration.

PB 1142-1465 is the Sample copy of Salary sheet for 2 months each of all the years under consideration of payment of wages on sample basis

PB 1466-1478 is the copy actuarial certificate.

PB 1479-1496 is the Sample copy of Bonus register maintained as per requirement of 'The payment of Bonus Act' showing actual payment proof of bonus to employees.

PB 1497-1502 is the Sample copy of Leave register maintained as per legal requirement.

PB 1503-1518 is the copy of Month wise PF / ESI deduction and deposit along with sample copy of 2 months challans for each year along with ledger account of PF.

PB 1519-1531 is the Copy of License to work at factory under Factory Act 1948.

PB 1532-1549 Copy of invoices raised by Shri Ram Export for the job work charges in the name of the appellant company.

PB 1550-1558 & 1565-1577 is the Copy of complete Bank statement along with complete bank book for relevant year.

PB 1559-1564 & 1578-1584 is copy of bank book showing that the payments were made through account payee cheques, TDS deducted.

PB 1590-1613 is the copy of ledger account of Shri Ram Exports in the books of assessee's company & vice versa, which shows that job work activities done by the said job worker during the year under appeal.

PB 1559-1564 & 1578-1584 is the copy of bank book of Shri Ram Export in the books of appellant to show that payment has been made through account payee cheque for fabrication charges paid to the said job worker.

PB 1585-1589 is the copy 26AS to show that TDS has been deducted on such job work done along with tax credit statement of Shri Ram Export.

35. Ld. Counsel submitted that the above evidences clearly speak for the genuineness of the charges incurred by the appellant company to the job worker involved and therefore, it is prayed that the disallowance made by Ld. A.O. by treating such job work charges as not genuine may please be deleted.

36. Adverse observations made in respect of job work expenses claimed with respect to M/s Shri Ram Exports are as under:-

1. Ld. A.O. has mentioned at page—13-14 of the assessment order 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.

In reply, was submitted that sister and brother in law of the assessee may not be expected to know the complete details about Sh. Subhash Chand Gupta. There is no legal bar that a person who runs business of selling belts cannot and would not do the other business of doing job work. Therefore the statements of the sister and brother in law of Sh. Subhash Chand Gupta do not convey any adverse against the appellant company and therefore objection of Ld. A.O.

may please be rejected. Copies of such statements were not provided nor were referred at any stage in the assessment proceedings nor were they produced for cross examination for that reason also such settlement have to be excluded from consideration.

2. Ld. A.O. has mentioned at page 13-14 of the assessment order 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.

In reply, it was submitted that this objection of Ld. A.O. also does not have substance as this is the contractual arrangement between Sh. Subhash Chand Gupta Prop. of M/s Shri Ram Export and M/s V K Dhingra& Co. and also due to constant personal touch of the auditor, if that very audit firm is engaged by the business constituent, there is nothing unusual.

3. Next observation of A.O. at page 13-14 of the assessment order is 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.

In reply, it was submitted that the job work done by Shri Ram Export was exclusively for the appellant and therefore employee of the assessee company helped the proprietor Sh. Subhash Chand Gupta to file his return of income in that process, if email id of the employee of the assessee company was also mentioned on the return of Sh. Subhash Chand Gupta, it does not prove that job work were not by Sh. Subhash Chand Gupta.

4. Ld. A.O. has mentioned at page 13-14 of the assessment order 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.

In reply, it was submitted this statement of the wife's of Sh. Subhash Chand Gupta surfaced for the first time in the assessment order and at no point of time such statement even referred by Ld. A.O., let alone the supply the said statement of the assessee. Therefore such statement cannot be considered as any evidence against the assessee. In any case wife remaining ignoring about their husband's income and activity in middle class families is not something unusual. Therefore on the basis of wife's statement, job work expenses incurred by the appellant company are not proved to be non genuine.

37. It is thus 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 on the assessee company and payment have been made by the assessee company to the job worker through account payee cheques and tax having been deducted at source and documents at page 598 to 605, & 908-1613 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 at page 2974 to 2976 of 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 such as Adhar 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, 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, on account of payment of wages and actuarial certificate. Similarly pages 1479 to 1496 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 1497 to 1502 is the sample copy of Leave register of the employee of the job workers. Similarly paper book page 1503 to 1518 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 1503 to 1518, 1519-1531, 1532-1549, 1550-1558 & 1565-1577, 1559-1564 & 1578-1584, 1590-1613, 1559-1564, 1578-1584 and 1585-1589 all 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 even on merit. The adverse observations made by the A.O. in the assessment order have been met by the assessee one by one and paper book pages 2976 to 2978 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.

38. 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 4 to 6 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) mis-appreciated 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. 6,41,39,357 is hereby deleted.

39. Ground No.10 and 11 of the assessee's appeal are in respect of disallowance of Rs. 10,18,44,865/- 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 16-31 of his order held such purchases were not genuine which was upheld by CIT(A) vide discussion made at page 69-76.

40. 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 and therefore the assessment of the year under appeal was one which had attained finality and therefore, in view of the decision of CIT vs. Kabul Chawla 380 ITR 573 (Delhi) and Principal CIT vs. Best Infrastructure India P. Ltd. in ITA No. 11-22/2017 dated 01.08.2017 the disallowance could not have been made. Further, it was submitted by the Ld. Counsel with the help of various evidences referred at page 2979 to 2983 of the paper book and 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 firm during the year under appeal, which is evident from the chart enclosed in the paper book (PB 606-(ii)-606-(iii) ) in assessee's own case of AY 2011-12.Ld. CIT(DR) relied upon the findings contained in the assessment and first appellate order.

41. It is seen that page 16-31 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 at page 18 of the assessment order and that several adverse things regarding the above supplier based upon some alleged enquiries made.

42. 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, even if they are taken as correct, 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 as held by Delhi High Court in the case of Principal CIT vs. Best Infrastructure India P. Ltd. in ITA No. 11-22/2017 dated 01.08.2017. Even the survey proceeding referred in the assessment order do not indicate any incriminating material and in any case anything found during the course of survey cannot be said to be any material found during the course of search. Therefore, we agree with the argument of Ld. Counsel that the impugned disallowance could not be made in the assessment order passed u/s 153A / 143(3) as the return having been filed on 29.11.2013 has attained finality. Therefore in view of the decision of Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla<sup>380</sup> ITR 573 (Delhi) the impugned addition is liable to be deleted and is deleted on this ground itself.

43. But since CIT(A) has discussed the impugned disallowance on merit also and arguments were made on the basis of evidences referred at page 2979 to 2986 of the paper book, we deem it

appropriate to deal with the disallowance on merit also. It would be appropriate for us to reproduce the written submissions filed by the assessee before the first appellate authority which is part of the paper book and referred and relied upon by Ld. Counsel:

44. Ld. Counsel earlier also had submitted 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 606-(ii)-606-(iii) ) in assessee's own case of AY 2011-12.

45. Further apart from this, a detailed reply dated 06.12.2017 (PB 289-291), 08.12.2017 (PB 292-293) & 12.12.2017 (PB 294-295) was filed by the appellant during the course of assessment proceedings in response to the show cause notice 704, dated 29.08.2017, which has been reproduced by Ld. AO at pages 27-31 of the impugned assessment order and also its all the annexures already enclosed in the paper book in assessee's own case for A.Y. 2011-12 at PB 417-419, 420-469, 1044-1045, 1050-1060, 1061-1158, & 2313-3832. It is submitted, as submitted in the said reply also, that purchases have been made from the said concern and payments against the said purchases have been made by account payee cheques.

PB 426-429 & 450-453 is the copy of ledger account in the books of M/s Jindal Fashion & M/s Akansha Fashion to show that sale of fabric to the appellant company and made payment through banking channel for A.Y.2013-14, which is already enclosed in the paper book for A.Y. 2011-12 in assessee's own case.

PB 490-501 & 554-567 is the copy of ledger account in the books of assessee company for A.Y. 2013-14 to show that purchases of fabric were made from M/s Jindal Fashion & M/s Akansha Fashion through banking channel, which is already enclosed in the paper book for A.Y. 2011-12 in assessee's own case

PB 292-293 is the copy of letter dated 08.12.2017.

PB 1236-1327 is the detailed chart showing the sales made by the assessee company and the garments produced in which the material / fabric purchased from M/s Jindal Fashion, M/s Akansha Fashion have been used, which is already enclosed in the paper book for A.Y. 2011-12 in assessee's own case.

46. The material when received from the above said concern, is evidenced with the help of Annexure-D reply letter 08.12.2017 i.e. purchased invoice of fabric, fabric receipt note, gate pass inward etc, enclosed in the paper book at PB 1328-1559(which is already enclosed in the paper book for A.Y. 2011-12 in assessee's own case) on sample basis. Apart from this, the material/fabric purchased from the above concern has been used in the production of garments which has been sought to be explained by the assessee with the help of detailed chart as per Annexure-C as assessee's reply letter 08.12.2017 (PB 1236-1327) (which is already enclosed in the paper book for A.Y. 2011-12 in assessee's own case showing the sales made by the assessee company and the garments produced in which the material/ fabric purchased from the above parties have been used.

47. Further, several evidences were filed by the assessee along with the above said reply to buttress its arguments that the

purchases were made from the above said concern and the same are also enclosed in the paper book at Annexure-D reply letter 08.12.2017 PB 1328-1559 (which is already enclosed in the paper book for A.Y. 2011-12 in assessee's own case and these evidences are copy of bank realization certificate, export sales invoices, packing list, shipping/ airway bill, purchase invoice of fabric from above stated party, lorry receipts, fabric receipt note from store and fabric inspection report. The copies of purchase invoices from the above said party on sample basis were also placed before Ld. AO apart from complete books of accounts which were produced to Ld. AO. Such sample copies of the purchase invoices are also enclosed in the paper book at PB 1328-1559 (which is already enclosed in the paper book for A.Y. 2011-12 in assessee's own case). Apart from this, a 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, was also enclosed which is enclosed herewith at Annexure -A and Annexure-D reply letter 12.12.2017 PB 2315-2326 & 2341-2377, (which is already enclosed in the paper book for A.Y. 2011-12 in assessee's own case).

PB 2321-2322 is the details of sale of pieces on sample basis along with consumption of fabric in meters and standard input / output norms, (which is already enclosed in the paper book for A.Y. 2011-12 in assessee's own case).

PB 2330 is the detail of reconciliation of purchase quantity and value of opening stock of fabric, purchase, consumption, cost of fabric sold and closing stock, (which is already

enclosed in the paper book for A.Y. 2011-12 in assessee's own case).

PB 2336-2340 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. 2011-12 in assessee's own case).

PB 2341-2377 is the standard input / output norms as prescribed under handbook of procedure volume-II of Foreign Trade Policy published by Ministry of Commerce, (which is already enclosed in the paper book for A.Y. 2011-12 in assessee's own case).

48. In other words, Ld. Counsel submitted that the fact that the purchases were made from the above said concern was proved and established by the assessee from the detailed description contained in the above said reply dated 06.12.2017 (PB 289-291), 08.12.2017 (PB 292-293) & 12.12.2017 (PB 294-295) and with the help of several evidences, which are part of the paper book at PB 417-419, 420-489 1044-1045, 1159-1186, 1187-1235 2313-3832 (which is already enclosed in the paper book for A.Y. 2011-12 in assessee's own case).

49. Therefore, it was not justified on the part of Ld. AO to have treated the purchases of fabric as non genuine transaction / purchases. In fact without the purchases, it was not possible that the production could have been made and since the exports were made, the productions were made and that also supports the case of purchases made by the appellant. Therefore, it is humbly prayed and requested that the action of Ld. AO in making surmise

that the purchases made by the assessee from the above said concern is not genuine, it is submitted with great respect is misconceived on facts and it is prayed that the addition made may please be deleted.

50. However, certain adverse observations have been made by Ld. AO while making the impugned disallowances which are being met by the appellant as under:-

1. It has been mentioned by Ld. AO at Page-16 of the assessment order 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.

In reply, it was submitted that if the said concern i.e. M/s Jindal Fashion, M/s Akansha Fashion made the substantial sales to the appellant company, then the bills raised by the said concern to the appellant would obviously be serially numbered. We are at loss to understand as to how Ld. AO is making some adverse observation in this regard, merely for the reason that the bills were having consecutive serial numbers.

Further, for meeting the contentions of Ld. AO regarding the payments being in round figures, it is submitted that to make payments to a vendor in round payment is not something which is unusual or improbable. The payments are made either bill wise or in round figures. Therefore, to make adverse observation merely for the reason that the payments were made in round figures is neither here nor

there and is based just in the air & it is requested that such adverse observation may please be ignored.

2. Ld. AO has mentioned at pages 17-19 of the assessment order 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.

In reply, it was submitted that in so far as the appellant is concerned since purchases were made by the appellant from M/s Jindal Fashion, M/s Akansha Fashion, the payments were made against the purchases and if the said concern in turn made payments to its vendors for various purposes, how can that be held against the assessee. Therefore, to find this usual business phenomenon as something which is adverse to the appellant is beyond comprehension and therefore this observation of Ld. AO may please be ignored and rejected.

3. Ld. AO has mentioned 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 at page 18 of the assessment order.

Ld. AO has further mentioned that enquiries were conducted and Tamil Nadu Merchantile Bank was asked to provide the bank account details of the parties to which monies were being paid by the said supplier of the appellant company and according to Ld. AO it was revealed that bank accounts of the parties to whom payments were being made by M/s Jindal Fashion, M/s Akansha Fashion were also existing in

the same bank i.e. in Tamil Nadu Merchantile Bank, Chandni Chowk, New Delhi.

According to Ld. AO bank account opening form and the transaction pattern in these bank accounts showed that the amounts transferred by the said supplier to its vendors were immediately withdrawn in cash on the same day or within a short span of time and most of the bank accounts were opened on the basis of lease deed of a rented premises.

Ld. AO has further mentioned that most of the bank account holders did not have PAN and even the parties having a PAN are not filing returns of income. Ld. AO further observed that the bank accounts of the vendors of the supplier i.e. M/s Jindal Fashion, M/s Akansha Fashion were being operated by Sh. Sanjay Jindal, by his family members or by concerns in which his family members are partners. Ld. AO has further mentioned that introduction of these bank accounts was made by M/s MANV Associates who are chartered accountants of the supplier i.e. M/s Jindal Fashion, M/s Akansha Fashion also.

In reply, was submitted that these adverse observations sought to be passed as adverse observations qua appellant company are totally misplaced. If the introducer of the bank accounts of the supplier of the supplier of the appellant company were identical or bank accounts of the supplier of the supplier of the appellant company were maintained in the same bank account or amount were withdrawn by the supplier of the appellant company in cash, they do not operate anything against the appellant.

4. Ld. AO has mentioned several adverse things regarding the above supplier 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 06.12.2017 (PB 289-291) filed to Ld. AO we made out specifically and we furnished such details in Annexure G, which is enclosed in the paper book at PB 1032-1043, (which is already enclosed in the paper book for A.Y. 2011-12 in assessee's own case that the said supplier was selling the fabric not only to the appellant company but to various other concerns also and total supplies purchased by the assessee constitutes only a miniscule percentage of the total supplies made by him in AY 2013-14.

It is so 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 & considered by us. Payment have been made through account payee cheques and documents at page 417 to 419, 420-469, 1044-1045, 1050-1060, 1061-1158, 2313-3832, 554-567, 292-293 & 1236-1327 of the paper book which establish the purchases made by the assessee.

51. 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 even 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 2983 to 2986 and reproduced above 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 are 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. In the result ground of appeal number 10 & 11 of the

assessee's appeal of the assessee are allowed and the addition of Rs. 10,18,44,865/- is deleted.

52. Grounds No.12 and 13 of the assessee's appeal are in respect of disallowance of Rs. 17,87,17,045/- 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). Assessing Officer at page 31-36 of his order held such purchases were not genuine which was upheld by CIT(A) vide discussion made at page 76-81.

53. 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 and therefore the assessment of the year under appeal was one which had attained finality and therefore in view of the decision of CIT vs. Kabul Chawla<sup>380</sup> ITR 573 (Delhi) and Principal CIT vs. Best Infrastructure India P. Ltd. in ITA No. 11-22/2017 dated 01.08.2017 the disallowance could not have been made. Further, it was submitted by the Ld. Counsel with the help of various documentary evidences referred at page 2986 to 2992 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 firm during the year under appeal, which is evidenced by the copies of purchase invoices, copy of statement of account of M/s SCIPL in the books of in the assessee company as enclosed at PB 2071-2195 & 2826-2936, 1617-1670, and also statement of account in the books of M/s SCIPL is also enclosed at PB 1765-1820, which would show that the payments have been made to M/s SCIPL 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 is enclosed in PB 2937-2956. 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).

54. 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.

55. It is seen that page 31-36 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 Super Connection India P. Ltd. 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.

56. In our considered view, from the findings recorded in the assessment order even if they are taken as correct 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. and whatever has been mentioned in the form of statements cannot be regarded as incriminating material as held by Delhi High Court in the case of Principal CIT vs. Best Infrastructure India P. Ltd. in ITA No. 11-22/2017 dated 01.08.2017. Even the survey proceeding referred in the assessment order do not indicate any incriminating material and in any case anything found during the course of survey cannot be said to be any material found during the course of search. Therefore, we agree with the argument of Ld. Counsel that the impugned disallowance could not be made in the assessment order passed u/s 153A / 143(3) as the return having been filed on 29.11.2013 has attained finality. Therefore in view of the decision of Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla<sup>380</sup> ITR 573 (Delhi) the impugned addition is liable to be deleted and is deleted on this ground itself.

57. But since CIT(A) has discussed the impugned disallowance on merit also and arguments were made on the basis of evidences referred at page 2986 to 2992 of the paper book, we deem it appropriate to deal with the disallowance on merit also.

58. 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. 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 1617-2460, 2463-2936 of 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:

59. It has been submitted that assessee has purchased fabric from M/s SCIPL during the year for an aggregate amount of Rs. 17,87,17,045/- which is evidenced by the copies of purchase invoices, copy of statement of account of M/s SCIPL in the books of in the assessee company is enclosed at PB 2071-2195 & 2826-2936, 1617-1670, and also statement of account in the books of M/s SCIPL is also enclosed at PB 1765-1820, which would show that the payments have been made to M/s SCIPL through banking channel. It is further important to submit that sales made by M/s SCIPL to the assessee have been accepted in the assessment of M/s SCIPL. Copy of assessment order of M/s SCIPL for A.Y. 2013-14 is enclosed in PB 2937-2956 together with 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 SCIPL in support of this fact at PB 209-211, 212-221(x).

60. It was also submitted that a detailed submissions vide letters dated 11.12.2017, 12.12.2017 was made during the course of assessment proceeding a copy of which is enclosed in the paper book at PB 1614-1616, 2461-2462 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 annexure that export would not have been possible by the assessee, if it had not purchased the goods from M/s SCIPL. In fact input output ratio and industry consumption were also furnished at PB 1904-1905. All the annexure referred in that letter are also enclosed in the paper book to show that purchase made by the assessee from M/s SCIPL could not be disbelieved at PB 1617-2460, PB 2463-2936.

PB 1617-1670 are the ledger accounts of M/s Super Connection India P. Ltd. in the books of appellant company.

PB 1765-1820 is the ledger account of appellant company in the books of M/s Super Connection India P. Ltd.

PB 1903 is the detailed chart showing the year wise purchases from M/s Super Connection India P. Ltd.

PB 1904-1905 is the category-wise sheet showing total sales in pieces on sample basis and consumption of fabric along with standard input / output norms.

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.

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.

PB 1959 is the detail of comparison between other garment exporter and the appellant company for material consumption as a percentage of sales.

61. Therefore, it was pleaded that purchases made by the assessee from M/s SCIPL were the genuine purchases and the addition made may therefore please be deleted.

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

1. Ld. A.O. has mentioned in para 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 was 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, 1904-1905. 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 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 SCIPL would have no knowledge of the affairs of SCIPL. Therefore this objection of Ld. A.O. may please be rejected.

2. Ld. A.O. has also mentioned in para 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 was 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.

3. Ld. A.O. has mentioned his conclusions in this para i.e. para 6.2 of the assessment order regarding Sh. Akshay Dhanda and Sh. Ajay Nagpal on the basis of their statements.

In reply, it was 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 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.

4. Ld. A.O. has mentioned in para 6.4, 6.5, 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 was 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 1904-1905, 1911-1958), comparison between other garments export so and in so forth (PB 1959). Therefore, the action of Ld. A.O. in making the impugned addition of Rs. 17,87,17,045/- is neither correct of fact in law and the same may please be deleted.

5. Ld. AO has mentioned several adverse things regarding the above supplier 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 1614-1616) 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 1960-2070, that the said supplier was selling the fabric to the appellant company and the material / fabric purchased from the SCIPL has been used in production garments, which have been exported by the assessee company to various parties.

63. 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 even on merit. Assessee has proved that the material was purchased from the vendor involved here in various years and payment 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 vendor can also not 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 2988 to 2992 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. We have seen that the vendor company is supplier of the fabric not only to the assessee company but to other garment exporters. 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. In the result, ground no. 12 & 13 of the assessee's appeal of the assessee are allowed and the addition of Rs. 17,87,17,045/- is deleted.

64. Ground No. 14 of the assessee's appeal and ground no. (vi) to (xi) of the departmental appeal are in respect of addition of Rs. 4,65,49,093/- made by AO under section 14A out of which a sum of Rs. 85,656/- was confirmed by CIT(A) and on the ground that assessee company has shown dividend income on mutual fund / shares amounting to Rs. 85,656/- 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 40-42 of his order and CIT(A) vide discussion made at page 92-93 of the appeal order discussed the issue.

65. 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 and therefore the assessment of the year

under appeal was one which had attained finality and therefore the disallowance could not have been made in view of the decision of Delhi High Court in the case of Kabul Chawla 380 ITR 573(Del). Ld. CIT(DR) relied upon the assessment order and assailed the relief allowed by CIT(A) and relied upon the grounds of appeal preferred in revenue's appeal.

66. We have seen the orders passed by the lower authorities and gone through the synopsis filed and written submissions filed before CIT(A). We have heard the rival contentions also.

67. In so far as the absence of incriminating material is concerned, there is nothing found in search in respect of this issue as is clear from the assessment order. We have already held that this is a case of unabated assessment and hence, no disallowance or addition could be possible without there being any incriminating material found as a result of search in view of the relied upon decision quoted above. Hence, we do not have any hesitation to hold that the disallowance made by AO under section 14A could not have been made and confirmed by CIT(A) and hence it is deleted.

68. In any case, there is exempt income only to the extent of Rs. 85,656/-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. But, Since we have deleted the entire amount of disallowance made by AO, hence even the disallowance sustained by CIT(A) to the extent of Rs. 85,656/- is also not sustainable. In the result, ground no. 14

of the assessee's appeal is allowed and grounds no. (vi) to (xi) of the departmental appeal are dismissed.

69. Ground no. 15 & 18 of the assessee's appeal are general and do not call for any adjudication under these grounds of appeal here.

70. Ground no. 16 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.

71. Ground no. 17 of the assessee's appeal relating to interest u/s 234B is consequential in nature.

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

73. Grounds of appeal no. (i) to (iii) are in connection with the addition of Rs. 17992/- made by the AO in respect of job work done through M/s Aam Bee Clothing which was deleted by CIT(A).

74. AO has discussed this issue at page 2-4 of the assessment order whereas CIT(A) has discussed this issue at page 57-58 of the appeal order.

75. Ld. CIT(DR) relied upon the finding recorded in the assessment order and Ld. Counsel for the assessee relied upon the findings recorded by CIT(A) and has also relied upon the submissions made before CIT(A) placed at page 2959-2964 of the paper book.

76. We have considered the entire material before us including the paper book, synopsis, and orders passed by the lower authorities. It is seen that the job work charges incurred in relation to this job worker was being allowed in the assessment order passed under section 143(3) for AY 2012-13. Job worker is assessed to tax also. We have taken ourselves to the written submissions filed by the assessee before CIT (A) and we do not find any error in the order of CIT(A) on this score in view of these submissions and paper book pages referred therein. Thus, we dismiss the ground of appeal no. (i) to (iii) of the revenue.

77. Ground no. (iv) of the revenue's appeal has been taken by us along with the grounds of appeal number 3-5 of the assessee's appeal.

78. Ground of appeal no. (v) of Revenue's appeal is in regard to a disallowance of Rs. 11,63,14,122/- made by AO by treating the product development expense as deferred revenue expense which was however deleted by CIT(A).

79. AO has discussed this issue at page 39-40 of the assessment order whereas CIT(A) has discussed this issue at page 90-92 of the appeal order.

80. 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).

81. We have considered rival contentions and have gone through the orders passed by the lower authorities. 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. (v) of the revenue's appeal before us.

82. Ground no. (vi) to (xi) of the departmental appeal have been taken by us along with the assessee's appeal's ground number 14.

**Order pronounced in the Open Court on 24<sup>th</sup> September, 2021**

Sd/-

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

**[ACCOUNTANT MEMBER]**

DATED: 24/09/2021

PKK:

Sd/-

**[AMIT SHUKLA]**

**JUDICIAL MEMBER**