

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI
(Through Video Conferencing)**

**BEFORE
SHRI O.P. KANT, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 6474/Del/2018
Asstt. Year 2013-14

ACIT, Circle 8(1) New Delhi.	Vs.	M/s. Earthline Apparels Pvt. Ltd., 2168, Gurudwara Road, Karol Bagh, New Delhi-110 005 PAN AABCE4236G
(Appellant)		(Respondent)

Department by:	Shri Jagdish Singh, Sr. DR
Assessee by :	Shri R.K. Kapoor, CA
Date of Hearing	10/11/2021
Date of pronouncement	15/11/2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the revenue against the order dated 19.07.2018 passed by the CIT(A) 3, Delhi for Assessment Year 2013-14.

2. The grounds of appeal are as under :-

“1. Ld. Commissioner of Income Tax (Appeals) erred on law and on the facts of the case in deleting the addition of Rs. 1,82,86,355/- made by the AO on account of Disallowance of part interest expenses.

2. Ld. Commissioner of Income Tax (Appeals) erred on law and on the facts of the case in deleting the addition of Rs. 70,67,233/- made by the AO on account of Estimated Gross Profit.

3. Ld. Commissioner of Income Tax (Appeals) erred on law and on the facts of the case in deleting the addition of Rs. 46,645/- made by the AO on account of Delayed Payment of Employee’s contribution towards ESI & PF.

4. The appellant craves leave to add, alter or amend any ground of appeal raised above at the time of hearing.”

3. The assessee company engaged in the business of manufacturing of sale of readymade garments and business. The assessee filed return of income declaring loss of Rs. (-) 2,94,63,712/-. The AO made addition of Rs. 1,82,86,355/- was excess interest which was claimed as an expense pertaining to the loan component transferred to M/s. Aero Club. The Assessing Officer also made addition of Rs. 70,67,233/- on account of estimated gross profit. The Assessing Officer also made addition on account of delayed payment of employees contribution towards PF/ESI amounting to Rs. 46945/-.

4. Being aggrieved by the assessment order the assessee filed appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee.

5. Ld. DR submitted that the CIT(A) erred in deleting the addition of Rs. 1,82,86,355/- in respect of part interest expense without giving cogent finding. As regards ground No. 2, the Ld. DR submitted that the addition on account of estimated gross profit was properly determined by the AO and CIT(A) was not allowed in deleting the said addition. As regards ground No. 3 the Ld. AR relied upon the assessment order.

6. Ld. AR submitted that in respect of ground No. 1, the CIT(A) has given a categorical finding. The assessee has repaid outstanding balance to M/s Aero Club and the balance of same loan was used for business purpose. Thus the Ld. AR submitted that the CIT(A) was right in deleting the addition. As regards ground No. 2, Ld. AR relied upon the order of the CIT(A). As regards ground No. 3 the Ld. AR relied upon the decision of Hon'ble Delhi High Court in case of CIT vs. AIMIL Ltd. (2010) 321 ITR 508 as well as that of Pr. CIT vs. Pro Interactive Service (India) Pvt. Ltd. ITA No. 983/2018 pronounced on 10.09.2018.

7. We have heard both the parties and perused all the relevant material available on record. As regards ground No. 1, the CIT(A) has not taken into account the observations made by the Assessing Officer that the receipt of interest component is mismatch in terms of proportion of cost on such loan apportioned to M/s. Aero Club. Though the assessee/Ld. AR pointed out the same, the said fact is not emerging out from the assessment order or from the order of the CIT(A). Therefore, it will be appropriate to

remand back this issue to the file of the Assessing Officer for proper adjudication. Needless to say the assessee be given an opportunity of hearing by following principles of natural justice. Ground No. 1 is partly allowed for statistical purposes. As regards ground No. 2, the CIT(A) has given a finding that the business model of the company is different as compared to M/s. Aero Club and the products which are sold by the assessee company are totally different from the comparable M/s. Aero Club. Therefore, the CIT(A) has rightly deleted the addition. There is no need to interfere with the findings of the CIT(A), hence ground No. 2 is dismissed. As regards ground No. 3, the issue is squarely covered by the decision of the Hon'ble Delhi High Court in case of AIMIL Ltd. (supra) and that of Hon'ble Delhi High Court in case of Pr. CIT vs. Pro Interactive Service (India) Pvt. Ltd. ITA No. 983/2018 pronounced on 10.09.2018. Hence ground No. 3 is dismissed.

8. In the result the appeal of the revenue is partly allowed for statistical purposes.

Order pronounced in the open court in presence of both the parties on 15th November, 2021.

**sd/-
(O.P. KANT)
ACCOUNTANT MEMBER**

**sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 15/11/2021

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1. Applicant

2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi