

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)
"E" BENCH, MUMBAI**

**BEFORE SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, HON'BLE JUDICIAL MEMBER**

ITA.NO. 1627/MUM/2020 (A.Y: 2014-15)

M/s. Shekhawadi Poly Yarn Ltd., Unit No. 1102/1103, A Wing Express Zone Patel watika Off Western Express Highway Malad (E), Mumbai - 400097 PAN: AABCS5224N	v.	DCIT – Central Circle – 2(2) Room No. 806, 8 th Floor Pratishtha Bhavan Old CGO Annexe Maharishi Karve Road Mumbai - 400020
(Appellant)		(Respondent)

Assessee by	:	Shri Ruhabh Mehta
Department by	:	Shri S.N. Kabra
Date of Hearing	:	28.01.2022
Date of Pronouncement	:	04.02.2022

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals)-48, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 27.02.2020 for the A.Y. 2014-15.
2. Brief facts of the case are that, assessee a firm engaged in the business of manufacturing of texturising and twisting yarn filed its original return of income on 26.09.2014 declaring total income of ₹.8,54,31,242/.

The case was selected for scrutiny under CASS and notice u/s. 143(2) and 142(1) of the Income-tax Act, 1961 (in short "Act"). A search action u/s.132 of the Act was carried out in Shekhawati Group of cases on 29.09.2015. During the course of search residential premise/ Lockers of the assessee of Shekhawati Group was searched. In the case of the assessee a survey u/s.133A was conducted at the office as well as business premises and certain books of accounts/loose sheets were impounded. The soft data in the computers/laptop/mobile phones were cloned and impounded. Consequent to the search operation, the case of the assessee was centralized u/s 127 with DCIT-CC-2(2). Mumbai vide centralization order No.Pr.CIT4/Centralization/2015-16/2417 dated 20-03-2016, for coordinated investigation. Assessing Officer required the assessee to prove why the sum representing out of books sales of scrap should not be added back to total income or respective assessment years and taxed. In response Ld. AR of the assessee attended and submitted the relevant information as called for and submitted that cash sales of scrap are being made on regular basis and cash sales of scrap has been worked out on estimated generation of scrap @ 0.162% of the total sales.

3. Not convinced with the submissions of the assessee the Assessing Officer completed the assessment u/s. 143(3) r.w.s. 153C of the Act dated 27.12.2017 determining the income of the assessee at ₹.9,03,05,710/- by

holding that assessee has shown scrap sale at ₹.11,80,825/- and as per estimation the sale of scrap comes at ₹.57,57,426/-, therefore, Assessing Officer added difference of ₹.45,76,601/- as unaccounted scrap of sales and added back to the total income of the assessee. Aggrieved assessee preferred appeal before the Ld.CIT(A) and Ld.CIT(A) sustained the addition made by the Assessing Officer. Aggrieved assessee preferred appeal before us raising following grounds in its appeal: -

"1. a) The order passed u/s. 143(3) r.w.s. 153C by the Ld. Dy. Commissioner of Income Tax, Central Circle — 2(2), Mumbai ("the Id. Assessing Officer") is without jurisdiction, invalid and bad in law and against the principles of natural justice.

b) The Id. Commissioner of Income Tax (Appeals) -48, Mumbai ("the Id. CIT(A)") erred in following the decision of its predecessor for AY 2010-11 to AY 2013-14 & AY 2015-16 without considering that the argument about no incriminating material pertaining to the appellant found in the course of search on third person leading to nullity of assessment u/s. 153C, was not advanced before the appellate authorities in the aforesaid years.

2. The Id. Commissioner of Income Tax (Appeals) -48, Mumbai ("the Id. CIT(A)") erred in facts and law in sustaining the addition to the extent of Rs. 17,19,175/- on estimated basis as deemed unaccounted scrap sales in cash without appreciating the explanations provided and the evidences placed on record by the appellant company.

3. Without prejudice to the above, the Ld. CIT(A) erred in facts and law in not following the decision of the Hon'ble ITAT in respect of same issue relating to the appellant for AY 2010-11 to AY 2013-14 & AY 2015-16 wherein the Hon'ble ITAT had restricted the addition to 50% of the total addition sustained by the then CIT(A) for the above years; accordingly, the addition for the year under consideration should have been restricted to Rs. 8,59,588/- (50% of Rs. 17,19,175/-).

4. Your appellant craves leave to add, alter, amend, delete or modify any or all the grounds of appeal."

4. At the time of hearing, Ld. AR of the assessee submitted that on identical facts in assessee's own case in ITA.No. 4696 to 4700/Mum/2018 for the assessment years 2010-11 to 2013-14 and 2015-16 the Coordinate Bench has granted relief of 50% of the total additions made by the Ld.CIT(A). Ld. AR requested that the same be adopted for the year under consideration.

5. On the other hand, Ld. DR relied on the orders of the Authorities below.

6. Considered the rival submissions and material placed on record, we observed that in assessee's own case in ITA.No. 4696 to 4700/Mum/2018 for the A.Ys. 2010-11 to 2015-16 the Coordinate Bench has granted relief of 50% of the total additions made by the Ld.CIT(A), while holding so the Coordinate Bench observed as under: -

"3.5. We find that the only evidence that has been found in the course of survey by the survey team was excess cash found in the sum of Rs.7,51,327/- based on the cash books in the months of July, August and September 2015 which admittedly pertains to A.Y.2016-17. We find the Ld. CIT(A) had considered Rs.7.5 Lakhs as the scrap sale of three months and had extrapolated the same for the whole year and arrived on the total scrap sale of Rs.30 lakhs for A.Y.2015-16, when the actual data pertains to A.Y.2016-17. Hence, the whole basis of placing reliance on a document which does not pertain to

the year under consideration itself makes the addition on a weaker footing.

3.6. We find based on the estimation of scrap sale made for A.Y.2015-16 in the sum of Rs.30 lakhs, the Id. CIT(A) had back worked and arrived on the estimated scrap sale for Rs.28 lakhs for A.Y.2013-14; Rs.24 lakhs for A.Y.2012-13; Rs.20 lakhs for A.Y.2011-12 and Rs.14 lakhs for A.Y.2010-11. For none of these estimations, there was any basis furnished by the Id. CIT(A). However, considering the totality of facts and Circumstances of the case and the survey conducted in the premises of the assessee, we hold that the assessee would be entitled for relief of 50% of the total additions made by the Ld. CIT(A) ultimately and in our considered opinion, this would meet the ends of the justice. The Ld. AO is directed accordingly."

7. As the facts are identical, respectfully following the above said decision of the Tribunal in assessee's own case, we direct the Assessing Officer to recompute the income of the assessee by granting relief of 50% of the total additions made by the Ld.CIT(A). Accordingly, grounds raised by the assessee are allowed.

8. In the net result, appeal filed by the assessee is allowed.

Order pronounced on 04.02.2022 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai / Dated 04/02/2022
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum