

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
Dr. ARJUN LAL SAINI, ACCOUNTANT MEMBER  
**ITA No. 114/SRT/2021** (AY 2016-17)  
(Hearing in Physical Court)

Suvidha Fashions 6-7, Vir Prabhu Industries, Vastadevdi Road, Katargam, Surat-395004 <b>PAN : ACEFS 1073 M</b>	Vs	Income Tax Officer, Ward- 3(2)(5), Aayakar Bhavan, Majura Gate, Opp. New Civil Hospital, Surat- 395001
Appellant / assessee		Respondent / Revenue

Assessee by	None (Written submission)
Revenue by	Shri Abhishek Gautam, Sr-DR
Date of hearing	06.05.2022
Date of pronouncement	06.05.2022

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by assessee is directed against the order of Id. National Faceless Appeal Centre (NFAC) Delhi /CIT(A) dated 26.05.2021 for assessment year 2016-17, which in turn arise out assessment order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 14.12.2018. The assessee has raised the following grounds of appeal:-

*"1. That on facts and circumstances of the case and in law, the learned CIT(A) has erred in arithmetically sustaining the addition of Rs.1,80,125/- @ 50% out of total addition of Rs.3,60,250/- made by the learned AO towards purchase of cloth from Milan Lace on the ground that the same is bogus purchases merely because the invoice number and the date of invoice were moving in reverse chronology. The learned CIT(A) has sustained 50% of the disallowance on the ground that*

*though the payment has been made through banking channel, which is a good evidence in support of the appellant but the appellant has not been able to explain satisfactorily invoices being in reverse chronological order.*

*2.That on facts and circumstances of the case and in law, the learned CIT(A) has erred in sustaining the addition of Rs.2,06,400/- towards construction expenses (cement purchases) on the ground that the payment by cheque was not seen in the bank statement.”*

2. Brief facts of the case are that assessee is a partnership firm engaged in the business of embroidery job work. The assessee filed its return of income for assessment year (A.Y.) 2016-17 on 11.08.2016 declaring loss of (-)Rs.11,04,158/-. The case of assessee was selected for scrutiny. During assessment, the Assessing Officer noted that assessee has shown purchases GPO cloth of Rs.3,60,250/-. The Assessing Officer on perusal of invoices, the assessing officer of the view this find that invoices are self-made and accordingly the Assessing Officer issued show cause notice as to why the purchase of GPO cloth of Rs.3,60,250/- should not be added as bogus. The assessee alongwith his reply submitted the copy of invoices and the payment details. On perusal of such details, the Assessing Officer noted that bill shows at Sl. No.(iii) being invoice No.312 is issued on 25.05.2015, however bill mentioned at Sl.No.(iv) having

invoice No.311 is issued on 26.05.2015 and bill mentioned having Sl.No.(ii) invoice No.313 was issued on 24.05.2015. The Assessing Officer noted that bills No. are in ascending form and dates are in descending form and the bills does not have any TIN, no telephone, no signature of seller. Accordingly, the purchases expenses of Rs.3,60,250/-, that is entire purchase was disallowed.

3. The Assessing Officer further noted that assessee has debited expenses of Rs.2,06,400/- on account of construction/ repair. On verification of details, Assessing Officer found that assessee furnished bills for purchase of cement. On show cause notice, assessee submitted that they have purchased cement for renovation of staff room, toilet and some minor renovation. No purchase bills for materials required for renovation of construction work as it was executed by contractor. The Assessing Officer was further viewed that expenses incurred by assessee as capital expenditure and was to be added to the capital asset. The assessee has treated such expenditure as revenue expenditure. Accordingly, Assessing Officer disallowed

the construction expenses and added back to the total income of assessee.

4. On appeal before Ld. CIT(A) assessee filed detailed written submission. The submission of assessee is duly recorded in para 6-1 and 7-2 in the order of Ld. CIT(A). On the disallowance of purchase, the assessee stated that they made purchase of GPO cloth from M/s Milan Laces, a proprietary concern for aggregate value of Rs.3,60,250/-. The purchases are supported by bills. The ledger account confirmation was furnished. The payments were made through cheque. The Assessing Officer disallowed purchase expenses on the basis of chronological bill No. (in reverse order) the Assessing Officer ignored the ledger account, confirmation and bank statement. No verification was made by Assessing Officer. The addition is made on assumption and presumption.
5. The Ld. CIT(A) after considering the submission of assessee held that the assessee has not satisfactorily explained the reverse chronological of invoice. However, bills payments were made through banking channel. The Ld. CIT(A) confirmed the addition to the extent of 50% of disallowance of such purchases. On the

other addition which relates to repair and maintenance, the assessee stated that cement was purchased for supplying to contractor, Naklang Construction for undertaking repairing work. The rest of the work was completed by the contractor, who managed the other material. The Assessing Officer disallowed on the ground that assessee could not produce the bills. In alternative, Assessing Officer treated the same as capital expenditure instead of revenue expenditure. The assessee further submitted that they have not only purchased cement but made payment of renovation work through account payee cheque and account confirmation was furnished. The Ld. CIT(A) after considering the submission of assessee noted that Assessing Officer disallowed expense of Rs.2,06,400/- but assessee furnished invoice of purchase of cement of Rs.94,943/- and Rs.1,11,458/-. The assessee also furnished the bank statement showing payment through account payee cheque. The Ld. CIT(A) noted that no debit balance is shown in the account and upheld the addition. Further aggrieved assessee has filed present appeal before the Tribunal.

6. None appeared on behalf of assessee, despite the service of notice of hearing on more than two occasions. On perusal of record, it reveals that assessee was duly served notice of hearing of appeal through authority letter on Shri Sameer Shah of M/s SNK & Co. CA is also filed on record. On further perusal, we find that the assessee has furnished certain documentary evidence and written submission on record on both the grounds of appeal. Therefore, we decide to adjudicate the appeal on the basis of written submission on record and after hearing the submission of Ld. Senior Departmental Representative (Sr. DR) for the Revenue.
7. Ground No.1 relates to disallowance of purchase of Rs.1,80,125/- being 50% of purchase of Rs.3,60,250/-. The assessee in its written submission submitted that assessee has shown purchase from Milan Lace during the year under consideration but no purchase in earlier or subsequent year was made from such party. The assessee has also furnished gross profit and net profit ratio for earlier and subsequent year. In assessment year 2015-16, the assessee has shown gross profit @ 9.18% and net profit 0.49% respectively and in assessment year 2016-17 i.e. for the year under consideration, the assessee has

shown gross profit @ 13.42%. For assessment year 2014-15, the assessee has shown gross profit @ 9.9%. The assessee also stated that if the disallowance of purchase is sustained, the gross profit margin would be around 150% as comparative of earlier years. As because there is some clerical mistake in preparing invoice, no disallowance should be made.

8. On the other hand, Ld. Sr. DR for the Revenue supported the order of lower authorities. Ld. Sr. DR submits that Ld. CIT(A) has already granted substantial relief to the fact that assessee failed to substantiate the genuineness of purchase.
9. We have considered the submission in written submission filed by assessee and submission made by Ld. Sr. DR for the Revenue. We find that the Assessing Officer made disallowance of entire purchase shown from Milan Lace on the ground that date of voucher and their dates are not matching being ascending or descending in numbers and in dates. The Ld. CIT(A) upheld the addition to the extent of 50% , by taking view that the assessee failed to explained the mismatch in voucher numbers and their dates. Before us, the assessee in its written submission filed, contended that it is a clerical mistake and that the payment were

made through cheque and assessee has also filed bank statement showing some purchase through cheques. It is settled law that in absence of corroborative evidence, the payment made through cheque is not sacrosanct. However, keeping in view this settled legal position that even if the purchase is found to be bogus only profit element embedded in such purchase is to be disallowed to avoid possibility of revenue leakage and not the substantial part of transaction. In our view, the disallowance @ 50% of purchase sustained by Ld. CIT(A) is on higher side. Considering the nature of trade, we deem it appropriate to restrict the disallowance @ 20% of Rs.3,60,250/-, which in our view will be sufficient to avoid the possibility of revenue leakage. The Assessing Officer is directed to re-compute the same. In the result, ground No.1 is partly allowed.

10. Ground No.2 relates to disallowance of renovation expense. The assessee in its written submission stated that Ld. CIT(A) sustained the disallowance without verification of bank statement payment being debited is not seen. The assessee furnished the copy of bank statement and account confirmation showing the purchase and payment made through account payee cheque. The

assessee further stated that not only purchase made by account payee cheque even the payment to contractor is also made through account payee cheque. Merely, Ld CIT(A) could not find the payment in bank statement, disallowance is not sustainable. On the alternative disallowance by treating as capital expenditure, the assessee stated that the expenditure was made on small modification to changing room for the workers, toilet repair and replacement of broken flooring in the factory shed which are not in the nature of capital expenditure.

11. On the other hand, Ld. Sr.DR for the Revenue supported the order of Assessing Officer.

12. We have considered the written submission filed by assessee and the submission of Ld. Sr. DR for the Revenue and perused the orders of lower authorities carefully. We find that the Assessing Officer made disallowance on the ground that assessee has not furnished any details except furnishing details of cement purchasing for renovation of staff room, toilet and other minor renovation. The Assessing Officer also treated the said expenditure as capital account in nature. The Ld. CIT(A) upheld the addition by taking view that he could not find the debit

balance in the account. We find that the renovation expense is not disputed by lower authorities. The Assessing Officer disallowed the expense by taking view that except invoice of cement no other bills were produced by assessee. The Assessing Officer also treated the said expenditure as capital expenditure. The nature of renovation is not disputed by Assessing Officer. In our view all renovation expense undertaken by assessee are minor renovation and the expenditure incurred on such minor repair cannot be classified as capital in nature. Before Ld. CIT(A), assessee specifically stated that cement was supplied to the Naklang Construction and rest of the materials were arranged by the said Naklang Construction. We find that no investigation or remand report of Assessing Officer was obtained. The Ld. CIT(A) confirmed the action of Assessing Officer by taking view that there is no debit balance in bank statement of assessee. We find that assessee has placed on record the invoice of Shri Hari Corporation, showing the payment of Rs.2,06,401/- vide cheque No.178 drawn in favour of Laxmi Vilas Bank. We find that assessee has also furnished invoice of cement confirmation. The assessee also filed the confirmation of work undertaking by

Naklang Construction. We also find that payment of such repair works was made through account payee cheque on 05.12.2015 which is duly reflected in the account statement of assessee. In view of aforesaid facts, we find that assessee has substantiated the expense of Rs.2,06,400/- since the repairs of small modification carried out at the premises are small scale repair which cannot be classified with capital expenditure. Therefore, Ground No.2 of the assessee is allowed. The Assessing Officer is directed to re-compute the same.

13. In the result, the appeal of the assessee is partly allowed.

Order pronounced in open court on 06/05/2022 at the closing of hearing by placing result on notice Board.

Sd/-  
**(Dr ARJUN LAL SAINI)**  
**ACCOUNTANT MEMBER**

Surat, Dated: 06/05/2022  
*Dkp. Out Sourcing Sr.P.S*

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

By order

// True Copy //

Assistant Registrar, ITAT, Surat