

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA BENCH "C", KOLKATA**

**BEFORE SHRI MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER**

**ITA No.116/Kol/2020
Assessment Year: 2012-13**

UNI WORTH TEXTILES LTD. 11A, Saronini Naidu Sarani, 4 th Floor, Kolkata - 700 017. PAN: AAACF 4449 H (Appellant)	Vs.	ACIT, CIR-12(2), Kolkata (Respondent)
---	-----	--

Present for:

Appellant by : Shri N.M. Bhansali, Advocate
Respondent by : Shri P.P. Barman, ACIT, DR

Date of Hearing : 09.06.2022
Date of Pronouncement : 28.06.2022

ORDER

PER SONJOY SARMA, JM:

This is an appeal preferred by the assessee against the order of Ld. CIT(A) – 4, Kolkata dated 29.11.2019 for A.Y. 2012-13. The assessee in this appeal has taken the following grounds of appeal:

"1. FOR that the Ld. CIT(Appeals) was not justified in confirming the disallowance of Rs.3,56,161/out of repairs and maintenance charges by alleging that no details have been given. The upholding of the disallowance is wrong, unjustified and arbitrary.

2. FOR that the Ld. CIT(A) was wrong and unjustified in enhancing the disallowance and adding the entire brokerage and commission of Rs.46,18,000/- by treating it as bogus without giving any show-cause notice. No notice of enhancement u/s.251(2) as alleged was received by the appellant. The addition of Rs.46,18,000/- in this manner ignoring the details furnished by the appellant is wrong, illegal and misconceived.

3. FOR that the Ld. CIT(A) was wrong and unjustified in confirming the disallowance of Rs.1,38,809/- on account of difference in Form 26AS. The upholding of the addition by the Ld.CIT(A) is wrong, unjustified and arbitrary.

4. FOR that the Ld. CIT(A) was wrong and unjustified in enhancing the disallowance of entire misc. expenses of Rs.1,11,87,066/- without giving any show-cause notice to the appellant. No show-cause notice u/s.251(2) as alleged by the Ld. CIT(A) was received by the appellant. The disallowance of Rs.1,11,87,066/- made on the basis of suspicion is wrong, illegal, arbitrary and perverse.

5. THAT the appellant craves leave to alter, amend, modify any of the grounds and/or take additional grounds before or at the time of hearing of this appeal.”

2. Brief fact of the case is that the assessee filed its return of income on 29.09.2011 showing a total income of Rs. Nil. The case of the assessee was selected for scrutiny through CASS and notices u/s 143(2) and 142(1) were issued on 07.08.2013 and in response to the same, the assessee appeared before the AO. During the hearing, the assessee furnished details in support of IT return which were tested and checked and are placed on record. After examining the same, the AO added the following amounts under the following heads:

<i>“i. Office Repair & Maintenance</i>	<i>Rs. 4,84,000/-</i>
<i>ii. Brokerage & Commission</i>	<i>Rs. 45,31,478/-</i>
<i>iii. Delay Payment of PF & ESI</i>	<i>Rs. 6,25,767/-</i>
<i>iv. Income difference with 26AS</i>	<i>Rs. 1,38,809/-</i>
<i>v. Professional & Legal Exp.</i>	<i>Rs. 2,20,300/-</i>
<i>vi. Mis. Exp.</i>	<i>Rs. 11,18,706/-</i>

and total income of the assessee recomputed at Rs. 1,71,06,621/-“

3. The assessee dissatisfied with the above order dated 10.03.2015 preferred an appeal before the ld. CIT(A) where appeal of the assessee partly allowed.

4. Aggrieved by the order dated 29.11.2019 passed by the ld. CIT(A)-4, the assessee is in appeal before the Tribunal.

5. At the time of hearing ld. AR submitted that the ld. CIT(A) while deciding issue no. 2 & 4 no notice was issued to assessee u/s 251(2) of the Act. However, its order alleged that notice was served upon the appellant assessee. Accordingly, the enhancement was made by CIT(A) without giving opportunity to assessee and ignoring

the details furnished by the appellant. As such the order passed by CIT(A) is wrong, illegal and misconceived and liable to be set aside.

6. On the other hand, ld. DR relied on the order of ld. CIT(A).

7. We after hearing the rival submission and perused the material available on record, we are of the considered view that since the ld. CIT(A) enhancement was made without giving show cause notice to the assessee and ignoring the details furnished by the appellant, we in the interest of justice set aside the impugned order passed by ld. CIT(A) and remit back to the file of the ld. CIT(A) for deciding the issues raised before us by way of a speaking order. We also direct the assessee to remain vigilant in receiving the notices of hearing of ld. CIT(A) and should not request for any adjournment unless otherwise required for reasonable cause and should file all necessary documents so as to facilitate ld. CIT(A) for passing the speaking order. Needless to mention that the assessee should be given proper opportunity of being heard.

8. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 28.06.2022.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(SONJOY SARMA)
JUDICIAL MEMBER

Kolkata, Dated: 28.06.2022

Biswajit, Sr. P.S.

Copy to:

1. The Appellant: Uniworth Textiles Ltd.
2. The Respondent: ACIT, CIR-12(2), Kolkata.
3. The CIT, Concerned, Kolkata
4. The CIT (A) Concerned, Kolkata
5. The DR Concerned Bench

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkat