

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" DELHI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.As. No.7654, 7655 & 7656/DEL/2019
Assessment Years 2013-14, 2014-15 & 2015-16

Sh. Subhash Chander Gupta, 33, Sampla Mandi, Rohtak, Haryana.	vs.	DCIT, Central Circle-II, Gurgaon.
TAN/PAN: AHUPG5848B		
(Appellant)		(Respondent)

I.T.As. No.7657 & 7658/DEL/2019
Assessment Years 2014-15 & 2015-16

M/s. Starline Clothing (P) Ltd., H.No. 298, Block F, Gali No.14, Hari Nagar Extn. Part-II, Badarpur, New Delhi.	vs.	Central Circle-II, Gurgaon.
TAN/PAN: AAUCS4428F		
(Appellant)		(Respondent)

Appellant by:	Shri Somil Agarwal, Adv. Shri Deepesh Garg, Adv.		
Respondent by:	Shri H.K. Choudhary, CIT-DR		
Date of hearing:	08	06	2022
Date of pronouncement:	14	07	2022

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned Appeals arises from the respective order of CIT(A) for different assessment years tabulated hereunder:

ITA No.	A.Y.	Assessee	Assessment order date	CIT(A) Order	Appeal by
7654/Del/2019	2013-14	Shri Subhash Chander Gupta	26.12.2017	CIT(A)- 3, Gurgaon, order dated 23.07.2019	Assessee
7655/Del/2019	2014-15	Shri Subhash Chander Gupta	26.12.2017	CIT(A)- 3, Gurgaon, order dated 23.07.2019	Assessee
7656/Del/2019	2015-16	Shri Subhash Chander Gupta	26.12.2017	CIT(A)- 3, Gurgaon, order dated 23.07.2019	Assessee
7657/Del/2019	2014-15	M/s. Starline Clothing P. Ltd.	26.12.2017	CIT(A)- 3, Gurgaon, order dated 23.07.2019	Assessee
7658/Del/2019	2015-16	M/s. Starline Clothing P. Ltd.	26.12.2017	CIT(A)- 3, Gurgaon, order dated 23.07.2019	Assessee

2. The grounds of appeal raised by the assessee in ITA No.7654/Del/2019 reads as under:

ITA No.7654/Del/2019 (Assessment Year 2013-14)

“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. 153C and that too for this year and further erred in passing the impugned assessment order, more so when ‘satisfaction’ has not been recorded by AO of the searched person and when there was no incriminating document was found.

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. 153C, 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 exercising his jurisdiction in making addition of Rs.32,06,968/- (i.e. 5% of Rs.6,41,39,357/-) on account of alleged commission/brokerage as business income and that too without giving show cause notice in this regard and impugned addition made by Ld. CIT(A) is bad in law as no incriminating material has been found as a result of search warranting such addition and by recording incorrect facts and findings and merely on the basis of surmises and conjectures and without giving the opportunity of being heard and without observing the principles of natural justice.

4. That in any case and in any view of the matter, action of Ld. CIT(A) in making addition of Rs.32,06,968/- on account of alleged commission/brokerage as business income, is bad in law and against the facts and circumstances of the case and the same is outside the purview of the impugned proceedings u/s. 153C of the Act.

5. That in any case and in any view of the matter, addition made by Ld. CIT(A) in the impugned 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.

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 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.

7. 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.

8. 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.”

3. When the matter was called for hearing, ld. counsel for the assessee referred to substantive grounds no.3, 4 and 5 and submitted that once these grounds are determined on the basis of facts on record, adjudication of other grounds would not be necessitated.

4. On facts, the assessee is engaged as a dealer in fabrication of cloth/fabric as proprietary concern M/s. Shri Ram Exports. As stated, the assessee performed job work for one M/s. Orient Craft Ltd. and received job work income from Orient Crafts Ltd. in consideration of job work carried out. The Assessing Officer however challenged the very existence of the proprietary concern Shri Ram Export which has claimed to have been done job work for M/s. Orient Crafts. The Assessing Officer, in essence, held the job work income reported by the assessee herein as sham and merely an eyewash. The proprietary concern of the assessee provided job work services to M/s. Sai Export which is also claimed to be a paper company operated by owners of Orient Crafts Ltd. Consequently, the Assessing Officer disallowed the expenses booked by Orient Craft, i.e., beneficiary of the purported job work services from Shri Ram Exports as bogus and consequently made an addition of Rs.6,41,39,357/- being receipt from Sai Exports, on protective basis in the hands of the assessee

herein. The Assessing Officer *inter alia* noted that similar addition in the hands of M/s. Orient Craft Ltd. in question has been carried out towards expenses claimed on account of job work, on substantive basis and thus the addition is made on protective basis in the hands of the assessee herein. The CIT(A), in first appeal, modified the addition and restricted the addition in the hands of the assessee at 5% of the total bogus job work income booked in the name of Orient Craft Ltd. by the assessee. Thus, the disallowances was brought down from Rs.6,41,39,357/- to Rs.32,06,968/- for Assessment Year 2013-14 in question. Similarly, disallowance were scaled down from Rs.6,86,34,619/- to Rs.39,31,731/- for Assessment Year 2014-15 in ITA No.7655/Del/2019. On identical footing, the disallowance was brought down from 19,65,28,033/- to Rs.98,26,402/- by the CIT(A) in Assessment Year 2015-16 in ITA No.7656/Del/2019.

5. In this factual backdrop, the ld. counsel for the assessee referred to the decision rendered by the Co-ordinate Bench in the case of the recipient of the services *M/s. Orient Craft Ltd. vs. DCIT, ITA No.3310/Del/2019 Assessment Year 2013-14 order dated 24.09.2021; ITA No.3311/Del/2019 Assessment Year 2014-15 order dated 24.09.2021 and ITA No.3312/Del/2019 Assessment Year 2015-16 order dated 24.09.2021* to submit that in all three assessment years, the Tribunal on examination of facts, in the case of the recipient of services found the expenditure claimed by the corresponding company to be genuine. On appraisal of documentary evidences, the Tribunal found the genuineness of job work carried out by Shri Ram Exports, a proprietary concern of the assessee.

5.1 The relevant operative paragraphs of the order of the Tribunal were adverted in this regard which is reproduced hereunder:

“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.”

5.2 The ld. counsel for the assessee submitted that where a clear finding of fact has been recorded by the Co-ordinate Bench of Tribunal in the hands of Orient Crafts, i.e., user of the job work services that the job work charges incurred by the Orient Craft through assessee are genuine, the whole allegation against the Assessee also is belied and fades into oblivion and does not survive. The ld. counsel accordingly urged for deletion of the addition sustained by the CIT(A) in respect of Assessment Year 2013-14, 2014-15 and 2015-16 as per captioned appeals.

5.3 The ld. DR for the Revenue, on the other hand, relied upon the orders of the lower authorities and contended that apart from ongoing dispute on *bona fides* of income declared the nature and genuineness of expenses incurred by the assessee-company has not been examined by the Assessing Officer at all. The Assessing Officer has merely made an addition on protective basis in view of substantive additions carried out in the case of Orient Craft Ltd. It was thus submitted that the matter should, at best, be restored to the file of the Assessing Officer for verification of the nature of the expenses claimed which are highly doubtful and inexplicable as per certain observations made by the Assessing Officer.

5.4 In the rejoinder, the ld. counsel for the assessee submitted that no appeal has been filed by the Revenue seeking verification of expenses and the assessee is entitled to relief as claimed having regard to the clear observations made in the course of Orient Craft Ltd. in relation to services rendered by the assessee-company.

6. In the backdrop of respective arguments, we notice that the Co-ordinate Bench of Tribunal in ITA No.3310; 3011 & 3312/Del/2019 in the case of Orient Craft Ltd. vs. DCIT, Central Circle-II, Gurgaon vide three separate orders all dated 24.09.2021 have given a clear finding towards genuineness of job work charges incurred by the Orient Craft Ltd. through the assessee-company herein. The Co-ordinate Bench has thus deleted the corresponding additions in the hands of the Orient Craft Ltd., i.e., recipient of the services from the assessee carried out on substantive basis.

7. The Co-ordinate bench, on appraisal of the facts carried out in the case of the recipient, has rendered a favourable finding. Hence, the basis for additions made in the hands of the assessee and later modified by the CIT(A) is inconsistent with the order of Co-ordinate Bench and thus cannot be countenanced. The additions were made by the AO to the extent of the job work receipt billed to Orient Craft Ltd. which were reduced to 5% thereof by the CIT(A). Hence, no case was made out on the nature of expenses incurred by the assessee herein. Consequently, the plea of the Revenue for restoration of the matter to the Assessing Officer for examination of corresponding expenses does not emanate from the assessment order and therefore cannot be entertained.

7. In the result, all the three appeals of the assessee in ITA No. 7654, 7655, 7656/Del//2019 are allowed.

8. The grounds of appeal raised by the assessee in ITA No. 7657/Del/2019 reads as under:

ITA No.7657/Del/2019 (Assessment Year 2014-15)

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 153C and that too for this year and further erred in passing the impugned assessment order, more so when 'satisfaction' has not been recorded by AO of the searched person and when there was no incriminating document was found.

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 153C, 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 exercising his jurisdiction in making addition of Rs. 1,88,248/- (i.e. 5% of Rs.37,64,954/-) on account of alleged commission/brokerage as business income and that too without giving show cause notice in this regard and impugned addition made by Ld. CIT(A) is bad in law as no incriminating material has been found as a result of search warranting such addition and by recording incorrect facts and findings and merely on the basis of surmises and conjectures and without giving the opportunity of being heard and without observing the principles of natural justice.

4 That in any case and in any view of the matter, action of Ld. CIT(A) in making addition of Rs. 1,88,248/- on account of alleged commission/brokerage as business income, is bad in law and against the facts and circumstances of the case and the same is outside the purview of the impugned proceedings u/s 153C of the

Act.

5. 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 rejecting the books of accounts u/s 145(3) of the Act.

6. That in any case and in any view of the matter, addition made by Ld. CIT(A) in the impugned 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.

7. 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.

8. 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.

9. 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.”

9. On the similar lines as in the case of Subhash Chander Gupta, the assessee has predominantly pressed Grounds No.3, 4 and 5 and submitted that the present controversy having been settled by the Co-ordinate Bench decision, other grounds need not necessarily be adjudicated. In the subject matter of appeal for AY

2014-15 captioned above, the ld. counsel pointed out that the assessee, in the instant case, has raised bills for supply of fabrics to M/s. Orient Crafts Ltd. which, in turn, has booked purchases of Rs.37,64,954/- made from the assessee-company instead of job work services rendered in the case of Subhash Chander Gupta. Likewise, supply has been carried out in Assessment Year 2015-16 amounting to Rs.1,00,82,436/- also. The CIT(A) has computed the addition of Rs.1,88,248/- and Rs.5,04,122/- for Assessment Years 2014-15 and 2015-16 in question being 5% of the invoices raised on Orient Craft Ltd similar to Subhash Chander Gupta case.

10. In the backdrop of these facts, the allegation of non genuine purchases of fabric made by the orient Craft Ltd. from the assessee herein has been reversed by the Tribunal with following observations:

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.*

11. On reading the appellate order of the Tribunal, it is seen that

assessee i.e., Starline Clothing Pvt. Ltd. is also included as one of the vendor companies to Orient Craft and thus all the observations made by the Co-ordinate Bench shall *mutatis mutandis* apply to vendor companies including the assessee company herein. In the light of the factual finding given by the Co-ordinate Bench in the case of consumer company, i.e. Orient Craft Ltd., the basis for additions made in the hands of the vendor assessee for the Assessment Years 2014-15 and 2015-16 in question does not survive any more.

12. In the result, both the captioned appeals of the assessee in ITA No.7657 & 7658/Del/2019 are allowed.

13. In the combined result, all the five captioned appeals of the assessee are allowed.

Order pronounced in the open Court on 14/07/2022.

Sd/-
[SAKTIJIT DEY]
JUDICIAL MEMBER

DATED: /07/2022

Prabhat

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER

Assistant Registrar