

**IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI**

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1969/Mum/2018
(A.Y. 2006-07)**

M/s Tropical Clothing Co. Private Limited Unit No.4, Nirman Kendra, Dr. E. Moses Road, Mahalaxmi, Mumbai – 400 011	Vs.	Addl. CIT-7(3) Aaykar Bhavan, M.K. Road, Mumbai – 400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AABCT6119R		
Appellant	..	Respondent

Appellant by :	Shri Sunil Desai
Respondent by :	Smt. Mahita Nair

Date of Hearing	26.08.2022
Date of Pronouncement	06.09.2022

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal filed by the assessee is directed against the order passed by the ld. CIT(A)-14, Mumbai, which in turn arises from the order passed by the A.O u/s 143(3) of the Act for A.Y.2006-07. The assessee has raised the following grounds before us:

“1. Re: Treating the garments distributed as free samples as undisclosed sales:

1.1 *The Commissioner of Income Tax (Appeals) has erred in confirming the action of the Assessing Officer of treating a part of the free samples*

distributed by the Appellant during the year as undisclosed sales and in adding a sum of Rs. 877,920/- to the income of the Appellant.

- 1.2 *The Appellant submits that considering facts and circumstances of its case and the law prevailing on the subject the garments distributed as free samples are not undisclosed sales and the addition made by the Assessing Officer in respect thereof is incorrect, misconceived, unwarranted being based on suspicions, surmises and conjectures and hence ought to be deleted and the Commissioner of Income Tax (Appeals) ought to have held as such.*
- 1.3 *The Appellant submits that the Assessing Officer be directed to delete the addition so made by him and to re-compute its total income accordingly.*

2. Addition to the value of closing stock of Finished Goods amounting to Rs.26,32,788/-

- 2.1 *The Commissioner of Income Tax (Appeals) has erred in confirming the action of the Assessing Officer of considering the value of closing stock as on 31.3.2006 at Rs. 134,14,906/- as against the value of Rs. 107,82,118/ adopted by the appellant thereby increasing by Rs. 26,32,788/-.*
- 2.2 *The Appellant submits that considering facts and circumstances of its case and the addition to the value of closing stock of finished goods is incorrect, misconceived, unwarranted being based on suspicions, surmises and conjectures and hence ought to be deleted and the Commissioner of Income Tax (Appeals) ought to have held as such.*
- 2.3 *The appellant submits that the Assessing Officer be directed to delete the addition so made by him and to re-compute its total income accordingly.*
- 2.4 *The Commissioner of Income Tax (Appeals) has erred in not considering the addition of Rs. 76,65,739/- made to the closing stock of the appellants for the assessment year 2005-06 as a part of the opening stock for the year under consideration.*
3. *Addition to the value of closing stock of Raw Material amounting to Rs.37,94,407/-.*
 - 3.1 *The Commissioner of Income Tax (Appeals) has erred in confirming the action of the Assessing Officer of considering the value of closing stock as on 31.3.2006 at Rs. 54,20,581/- as against the value of Rs. 16,26,174/ adopted by the appellant thereby increasing by Rs. 37,94,407/-.*
 - 3.2 *The Appellant submits that considering facts and circumstances of its case and the addition to the value of closing stock of raw material being fabrics is unwarranted and the addition made by the Assessing Officer to the appellant's total Income is misconceived, unjustified, illegal, incorrect and bad in law.*

3.3 *The appellant submits that the Assessing Officer be directed to delete the addition so made by him and to re-compute its total income accordingly.*

4. Addition to the value of closing stock of Accessories amounting to Rs.14,48,827-.

4.1 *The Commissioner of Income Tax (Appeals) has erred in confirming the action of the Assessing Officer of considering the value of closing stock as on 31.3.2006 at Rs. 45,75,577/- as against the value of Rs. 31,26,750/- adopted by the appellant thereby increasing by Rs. 14,48,827/-.*

4.2 *The Appellant submits that considering facts and circumstances of its case and the addition to the value of closing stock of accessories is unwarranted and the addition made by the Assessing Officer to the appellant's total income is misconceived, unjustified, illegal, incorrect and bad in law.*

4.3 *The appellant submits that the Assessing Officer be directed to delete the addition so made by him and to re-compute its total income accordingly.*

5. *The appellant company craves your leave to add, alter, modify, delete or amend any of the above mentioned grounds of appeal.”*

2. The fact in brief is that return of income declaring income of Rs. 16,74,17,459/- was filed on 29.11.2006. The return of income was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 27.11.2007. The assessment u/s 143(3) of the Act was finalized on 31.12.2008 and total income was assessed at Rs.18,98,32,797/-. Further relevant fact of the case are discussed while adjudicating the ground of appeal filed by the assessee as under:

Ground No. 1: Treating the garments distributed as free samples as undisclosed sales:

3. During the course of assessment the A.O noticed that assessee has shown 4720 pieces of garments to have been rejected/distributed as free samples. The A.O stated that in assessment year 2005-06 the assessee had also claimed to have distributed 4350 pieces as free samples. The A.O has also referred the free samples claimed by the assessee in A.Y.

2003-04 and A.Y. 2004-05 respectively. The A.O stated that main reason for disallowance in A.Y. 2003-04 because of claiming of uniform given to the workers, however from A.Y. 2005-06 no claim of uniform given to the workers were claimed. The A.O further stated that disallowance in earlier year was restricted to 45.45% in A.Y. 2003-04 and 51.33% in A.Y. 2004-05, therefore, during the year also the A.O restricted claim to the extent of 50% of the free samples on the ground that no evidence has been produced in support of the assessee's claim of distribution of free samples.

4. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has sustained the disallowance made by the A.O.

5. Heard both the sides and perused the material on record. The similar issue on identical fact has been adjudicated by the coordinate benches of the ITAT in the assessee's own case in respect of assessment year 2002-03 vide order dated 05.06.2013 and in respect of assessment year 2003-04 to 2005-06 vide order dated 31.07.2017. The ld. Counsel has specifically referred the order of the ITAT dated 31.07.2017 placed at page no. 38 in the paper book and submitted that on similar basis in the case of the assessee for the year under consideration the number of sample allowable shall be as under:

Particular	A.Y. 2006-07
i. Container samples to statutory authorities .	2448
ii. Preproduction samples to buyers and HO	788
iii. Preshipment same to buyers and HO	788
iv. Pre shipment samples to textiles committee for garment approval	394
Total	4418

In this regard we have gone through the finding of the ITAT vide order dated 31.07.2017 pertaining to the assessment year 2003-04 to 2005-06 wherein identical issue and relevant facts held as under:

“Ground No. 8 relates to trading of Garments distributed as free samples as undisclosed sales. The ld. AR of the assessee argued that this ground of appeal is also covered in favour of assessee by the decision of Tribunal in assessee's own case for AY 2000-01 & 2002-03. The ld. DR for the Revenue not disputed the contention of Id. AR of the assessee. We have considered the rival submission of the parties and have gone through the order of Tribunal in assessee's own case for AY 2000-01 & 2002-03 wherein similar ground of appeal was raised by assessee vide Ground No.3 in ITA No. 3143 & 3144/Mum/2007 The Tribunal has passed the following order.

"47 We have carefully considered the rival contentions, perused the findings of the authorities blow and the material placed on record. The assessee in the audited accounts, had claimed that 2,978 pieces of garment have been distributed as free samples. The main contention of the assessee was that certain samples were required to be given to the Excise and Customs authorities and textile committee for the purpose of inspection and verification. This fact has not been doubted by the Assessing Officer and has given the benefit of 500 pieces. The learned Commissioner (Appeals) has confirmed the action of the Assessing Officer after rejecting the contentions raised by the assessee as discussed above From the material referred to the Sr. Counsel, it is seen that firstly, Customs authority Export Department requires certain sample piece of garment for the purpose of examination and inspection for which the assessee is required to give sample pieces, secondly, some of the samples are also required to be given to the buyers for approval of quality, design and style. Lastly, besides this, the assessee has also claimed that some of the sample pieces have been given to workers as uniform and also for the purpose of charity. This last claim of the assessee is not substantiated at all. Looking to the fact that the assessee has given details of container samples given to various statutory authorities which were 950 pieces and samples for pre-production and pre-shipment for 830 pieces, we are of the considered opinion that it would be reasonable to give over all benefit of 1,800 sample pieces from the total free samples of 2,978 pieces. Balance cannot be allowed for the simple reason that the same have not been substantiated by way of any documentary evidence at all.

48. Insofar as the working of rate of per piece is concerned, we are not convinced by the contentions raised by the assessee for the simple reason that the assessce was unable to substantiate as to what was the rate per piece sold in the local market. Had it been so, then the piece as worked out by the assessee could have been applied. Thus, out of the total pieces of 2,978, the Assessing Officer is directed to give benefit of 1,800 pieces and balance pieces should be treated s undisclosed sales after applying the rate of Rs. 505 21. Thus, ground no.3, is treated as partly allowed."

9. We have seen that assessee has shown the total production for the year under consideration is 13,07,555 pieces. The assessee distributed free sample of 3,673 pieces, which is .28% of the total production. Considering the submission of the Id. AR for the assessee that full details of free samples have been furnished this year, we direct AO to grant the relief after verification of details. Thus, Ground No.3 is treated as allowed for statistical purpose.”

During the year under consideration assessee had shown sale of 1834988 pieces of garments in which 4720 pieces were shown as rejections and distribution of samples which comes to 0.26% of the sales. The assessee had also given the specific details i.e 2448 samples issued to excise and custom authority, 788 to buyers and H.O 788 for pre-shipment sample to buyer and HO, 394 pre-shipment samples to textile committee for garment approval and 302 as defective garment due to shade variation and stains. However, the lower authorities have made general observation without specifically considering the supporting material furnished by the assessee. In view of the above facts and circumstances we direct the A.O to allow the claim of the assessee for free samples after verification of the detail as directed by the ITAT in the above referred order. Therefore this ground of appeal of the assessee is allowed for statistical purpose.

Ground No. 2: Addition to the value of closing stock of finished goods amounting to Rs.26,32,788/-:

6. During the course of assessment proceedings the A.O noticed that assessee has made valuation of finished stock of garments at Rs.107,82,118/-. The A.O further stated that assessee has not substantiated how the closing stock of finished goods have been worked out. Therefore, the A.O computed average value of finished goods in closing stock at Rs.89.83/-. The A.O further stated that prima facie it appeared that there was under valuation of closing stock of finished

goods and asked the assessee to give evidence regarding its valuation of closing stock. The assessee has made its submission vide letter dated 10.12.2008 and A.O stated that assessee should have furnished the detail regarding closing stock of finished goods, export order, date of order, quantity of order relevant purchase of raw material value wise/quantity wise and assessee has simply stated that it has valued closing stock following the principle of stock valuation i.e at cost or market value whichever is less. The A.O had valued the stock at 50% of the average value of cost of goods sold as per para 3.391 of the assessment order. Therefore the A.O has made addition of Rs.26,32,788/- to the closing stock of the assessee company.

7. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has sustained the addition .

8. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated above, the ld. Counsel submitted that assessee manufactured the variety of garments such as shorts, trousers, night dresses, pyjamas, shirts, wraps, tops etc, and the value of each garments varies from item to item. It is submitted that the A.O has not considered the method of valuation of inventory consistently followed by the assessee mainly the cost or market whichever is lower. It was further submitted that the value of garments varies from garments to garments depending upon its design consumption of fabrics type of fabrics used consumption of man hours etc, therefore, taking average value give erroneous conclusion. Alternatively the ld. Counsel also submitted that addition made to the closing stock has to be considered as part of the opening stock in the next year. After taking into consideration the detail and submission of the assessee we observe that

A.O has not considered all the relevant details such as value of garments which vary from item to item and other relevant facts like quality of the products etc, therefore, we consider it appropriate to restore the valuation of finished stock to the file of the A.O for deciding afresh after taking into consideration the relevant supporting detail and material to be furnished by the assessee during the course of set aside proceedings. Alternatively in case the A.O make any addition in the closing stock he is also directed to consider the same as opening stock in the next year. Therefore, this ground of appeal of the assessee is allowed for statistical purpose.

Ground No. 3: Addition to the value of closing stock of raw material amounting to Rs.37,94,407/-:

9. The A.O come to the conclusion that there was under valuation of closing stock of raw material of fabrics he derived average cost of woven fabrics cost worked out at Rs.71.46 per meters and in respect of Knited – fabrics the fabric average cost worked out at RS.235.63 per kg. However the closing stock was valued at a much lesser rate i.e Woven-fabric Rs.51.51 per mtr and Knited – fabrics at Rs.163.77 per kg. Therefore, on ad-hoc basis the closing stock value has been determined at 50% as under:

Particulars	100% Value	15% value as per appellant	50% value as per AO	Difference
Stock at Billimora	9,765,607	1,464,841	4,882,804	3,417,963
Stock at Navsari	1,075,553	161,333	537,777	376,444
Total				3,794,407

Accordingly, A.O has made addition of Rs.37,94,407/- by treating the undervalue of closing stock of raw material. The ld. Counsel has sustained the addition.

10. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated above, the ld. Counsel submitted that each type of fabrics has different rates depending upon various factors such as its width quality design, fibre composition etc. In the paper book the ld. counsel at page no. 151 has also enclosed the summary of rate of Woven Fabrics and also enclosed the supporting copy of purchase bills at page no. 152 to 173 of the paper book. It is further submitted that rates vary from 48.05 per meter to Rs.125 per meter. It was also submitted that assessee had also old stock of fabrics as old as 8 years at its factory at Billimora & Navsari and this kind of stock cannot be used in any other order of the buyer, therefore, the same was valued at 15% of the original cost and these facts and material has not been considered by the A.O while determining the valuation of closing stock of raw material on average basis. Considering all these facts and material placed in the paper book we restore this issue to the file of the AO for recomputing the value of closing stock after taking into consideration the relevant supporting detail and evidences placed by the assessee in the paper book. Considering the alternative contention of the ld. Counsel, in case the A.O make any addition in the closing stock he is also directed to consider the same as opening stock in the next year. Therefore, this ground of appeal of the assessee is allowed for statistical purposes.

Ground No. 4: Addition to the value of closing stock of accessories amounting to Rs.14,48,827/-:

11. During the course of assessment the assessee submitted statement of accessories showing opening stock, purchase, consumption and closing stock. However, the A.O observed that the sales turnover has come down by 21.42% but the cost of hangers has gone upon instead of going down. Therefore, the A.O has applied the average value of opening stock at Rs.12.91 per hangers to the quantity of 100216 and derived the value at Rs.12,93,789/-. The A.O has made addition on the basis of average value of hangers/levels etc. In the appeal the ld. CIT(A) has sustained disallowance made by the A.O.

12. Heard both the sides and perused the material on record. The ld. Counsel submitted that A.O on a adhoc basis applied rate of trading balance of hangers i.e Rs.12.91 to the closing balance of hangers and average purchase rate of lace & labels and tags of Rs.3.68 and Rs.1.18 respectively and made addition of Rs.14,48,827/-. It is further submitted that A.O has not considered that there was various types of hangers, laces & labels having varying rate. In this regard in the paper book the ld. Counsel has placed copies of supporting bills and materials of hangers at page no. 190 to 199, for lace at page no. 202 to 207 and for labels and tags at page no. 208 to 219 of the paper book. After considering the facts and the detail filed we consider it appropriate to restore this issue to the file of the A.O for computing the value of closing stock of accessories a fresh after taking into consideration the supporting bills and evidences placed by the assessee in the paper book. On the alternative contention of the assessee, in case the A.O make any addition in the closing stock he is also directed to consider the same as opening stock in the next year. Therefore, this ground of appeal is also allowed for statistical purposes.

13. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 06.09.2022

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated 06.09.2022

PS: Rohit

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,
सत्यापित प्रति //True Copy//

(Asst. Registrar)
ITAT, Mumbai