

**IN THE INCOME TAX APPELLATE TRIBUNAL RANCHI BENCH, RANCHI
VIRTUAL HEARING AT KOLKATA**

[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 13/Ran/2020
Assessment Year : 2016-17**

Sri Praveen Kumar Agarwal	Vs.	ACIT, Circle-2, Dhanbad
PAN: ACDPA 0745 P		
Appellant		Respondent

Date of Hearing	17.01.2023
Date of Pronouncement	25.01.2023
For the Assessee	Shri Devesh Poddar, Advocate
For the Revenue	Shri Pranob Kumar Koley, Sr. DR

ORDER

Per Shri Sonjoy Sarma, JM:

This is an appeal filed by the assessee is against the order dated 28.11.2019 passed by the ld. CIT(A), Dhanbad for the A.Y. 2016-17. The assessee has raised the following grounds of appeal:

“1. For that ld. CIT(A) was not justified in restricting the disallowance to 10% on account of discount price/difference in tag price and selling price as against addition of 7.5% made by ld. AO.

2. For that the assessee initially claimed the deduction to the extent of 20% which ld. AO restricted to 7.5%. In appeal ld. CIT(A) restricted the addition to 10% against 7.5% made by the ld. AO. In course of appeal it was argued that Hon’ble ITAT Ranchi Bench, Ranchi in similar case has allowed deduction to the extent of 15% and as such alternatively 15% should have been allowed. As such, the addition confirmed by ld. CIT(A) restricting the addition to 10% is unjustified, illegal and fit to be deleted.

3. For that interest u/s 234B should have been charged on the returned income and not on the assessed income following the decision of Hon’ble Jharkhand High Court.

4. For that other grounds in detail will be argued at the time of hearing.”

2. Brief facts of the case are that assessee is an individual engaged in the business of trading in sarees and salwar suits through his proprietary concern, M/s. Alankar Sarees having two retail counters one at Dhanbad and the other at Bokaro. The return of income of Rs. 44,95,110/- was filed by the assessee for assessment year in question and the case of the assessee was picked up for scrutiny assessment. A survey u/s 133A of the Act carried out on 30.11.2015 wherein certain documents were impounded and physical inventory of the stock was taken on the date of survey. In consequent to that the assessee filed reconciliation of stock whereby excess stock of Rs. 36,04,937/- was declared. In the assessment proceeding, the ld. AO observed that the assessee claimed deduction towards outdated, defective and rejected stock. The assessee pleaded that deduction claimed on account of damaged clothes and on certain clothes which have become out of fashion and are outdated which were not purchased by any of the customers or alternatively such goods are sold at much cheaper prices. The assessee substantiates its claim before the AO submitted the copies of cash memos as well as relevant sale bills of few such items were filed before the ld. AO. At the time of assessment proceeding, the ld. AR demonstrated from such cash memos and relevant sales memos that those goods were sold at much lesser price than tag price and pleaded that the deduction claimed by the assessee was justified and allowable. However, the ld. AO allowed the deduction @ 7.5% as against the deduction claimed at 15% by the assessee and the ld. AO by disallowing of Rs. 7,97,583/- added to the income of the assessee.

3. Dissatisfied with the above order passed by the ld. AO, assessee preferred an appeal before the ld. CIT(A). However, ld. CIT(A) considering the submission made by the ld. AR of the assessee partly allowed the appeal of the assessee with the direction to the AO to allow deduction @10% as against 7.5% allowed by the assessing officer.

4. Aggrieved by the above order passed by the ld. CIT(A), assessee is in appeal before this Tribunal. The ld. AR submitted that on similar circumstances, Hon'ble ITAT, Ranchi Bench, Ranchi in ITA No. 104/Ranchi/2014 dated 02.12.2014 has

allowed deduction to the extent of 15% and the Id. CIT(A) did not consider such argument made before him. Therefore, the order passed by the Id. CIT(A) required to be interfered by this Tribunal by allowing deduction to the extent of 15% on account of discount price in tag price as against the addition of 7.5% made by the Id. AO. He further submitted that the addition confirmed by the Id. CIT(A) restricting the addition to 10% is unjustified, illegal and fit to be deleted. On the other hand, Id. DR submitted that the claim of the assessee already allowed by the Id. CIT(A) by restricting the disallowance to 10% on account of discount price/difference in tag price and selling price as against addition of 7.5% made by the Id. AO. At the time of hearing the Id. DR submitted that while passing the order, the Id. CIT(A) duly considered the case law as referred by the Id. AR placed before this Tribunal while passing the impugned order and distinguish the same. Therefore, the order passed by the Id. CIT(A) is within the provisions of law and nothing required to be interfered by the Tribunal.

5. We after hearing the rival submission made by the parties and consider the material available on record and perusing the decision rendered by the co-ordinate bench (supra) we find that the assessee claimed deduction in respect of certain clothes which have become out of fashion and are outdated stock which were not purchased by any of the customers. Therefore, such goods were sold at much cheaper price as used to be sold in usual course and the deduction as claimed by the assessee @15% on such stock is justified. In such a situation our considered view that ends of justice would meet if deduction allowed @15% for outdated rejected and defective goods @15% as against 10% allowed by the Id. CIT(A) in this case is reasonable. We also consider the view taken by the Id. co-ordinate bench (supra) and we feel that deduction of 15% is fair and justified in case of assessee. Accordingly, we direct the Id. AO to allow the deduction @15% as against 10% allowed by the Id. CIT(A).

6. In terms of foregoing paragraph, we allowed the issue no. 1 & 2 raised by the assessee. The another issue in respect of interest u/s 234A and 234B, the Id. AR submitted that the interest should be charged on the returned income and it should not

be charged on assessed income following the decision of Hon'ble Jurisdiction High Court in the case of Ajay Prakash Verma 2013 (1) JCR 580 (Jhr) on this issue. After hearing both the parties and facts on records, we restore this issue to the file of the AO to calculate the interest in accordance with law. The ground is allowed for statistical purposes.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 25.01.2023

Sd/-

Sd/-

(Rajesh Kumar)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 25.01.2023

Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant- Sri Praveen Kumar Agarwal, G-4, Jamuna Apartment, Shanti Bhawan, Bank More, Dhanbad-826001.
2. Respondent – ACIT, Circle-2, Dhanbad.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata