

**THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Yogesh Kumar US, Judicial Member

ITA No. 1235/Del/2018 : Asstt. Year : 2014-15

Liberty Shoes Ltd., 13 th Mile Stone, Liberty Puram, GT Road, Bastara, Kutail, Karnal, Haryana	Vs	DCIT, Circle Karnal, Karnal
(APPELLANT)		(RESPONDENT)
PAN No. AAACL3146K		

ITA No. 1979/Del/2018 : Asstt. Year : 2014-15

ACIT, Circle Karnal, Karnal	Vs	Liberty Shoes Ltd., 13 th Mile Stone, Liberty Puram GT Road, Bastara, Kutail, Karnal, Haryana
(APPELLANT)		(RESPONDENT)
PAN No. AAACL3146K		

Assessee by : Sh. Satish Kumar Goel, Adv.

Revenue by : Sh. Amit Shukla, Sr. DR

Date of Hearing: 28.11.2022

Date of Pronouncement: 08.02.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

These are the appeals filed by the assessee and the revenue against the orders of the Id CIT(A), Karnal dated 24.01.2018.

2. The assessee has raised the following grounds of appeal:

"1. That the order of the Id Commissioner of Income Tax (Appeals) is against law and facts.

2. *That in the facts and circumstances of the case of the appellant company the order of the Id Commissioner of Income Tax (Appeals) in confirming addition of Rs. 2,73,01,709/- in respect of manufacturing/ trading of school bags profit is highly arbitrary exorbitant, illegal, void and uncalled for.*

3. *That in the facts and circumstances of the case of the appellant company the order of the learned Commissioner of Income Tax (Appeals) in confirming addition of Rs. 64,11,300/- in respect of Trading results of fabrics is altogether arbitrary, illegal, void and uncalled for."*

3. The revenue has raised the following grounds of appeal:

"1. *Whether on the facts and in the circumstances of the case, the CIT(A).has erred in deleting the addition of Rs.59,67,365/- on account of expenses related to exempt income u/s 14A read with Rule 8D of I.T. Rules, clearly overlooking the spirit of "section 14A according to which the tax exempt income need not be necessarily included in the income of the year under consideration for the disallowance to be triggered in respect of expenses that shall eventually result in exempt income in future years.*

2. *Whether on the facts and in the circumstances of the case, the CIT(A) 'has erred in deleting the addition of Rs.59,67,365/- on account of expenses related to exempt income u/s 14A read with Rule 8D of I.T. Rules by failing to note that the intention of section 14A is clear, as Rule 8D (2) (ii) [while explaining B] and 8D(2) (iii) unequivocally use the expression " does not or shall not form part of the total income...." (emphasis supplied) thus clearly factoring in even the future possibility of tax exempt status of the impugned income against which the expenses to be disallowed are incurred.*

3. *Whether on the facts and in the circumstances of the case, the CIT(A) has erred in ignoring the CBDT Circular 5/2014 dated 11.02.2014 in which clarification has been provided on disallowance of expenses under section 14A even in cases where corresponding exempt income has not been earned.*

4. *Whether on the facts and in the circumstances of the case, the CIT(A) has erred in ignoring the fact that the CBDT Circular 5/2014 dated 11.02.2014 has not been even considered in Hon'ble Punjab & Haryana High Court's*

decision in the case of M/s Lakhani Marketing Inc. in ITA No.270/2008 on which reliance has been placed upon by CIT(A).

5. Whether the CIT(A) has erred in deleting the disallowance of Rs.57,39,524/- out of total foreign travel expenses of Rs. 1,58,52,751/- completely overlooking the fact that the assessee had failed to establish the commercial expediency for the said expenses and had also failed to furnish any documentary evidence in support of Foreign Exchange Expenses, Credit Card and Other Expenses despite numerous opportunities granted by the AO as recorded in the assessment order.

6. Whether the CIT(A) has erred in deleting the disallowance of Rs.57,39,524/- out of foreign travel expenses on the ground that the assessee had separately booked the personal foreign travel expenses of directors/promoters, by overlooking the fact that separate accounting of part of total expenses as personal expenses does not automatically prove the commercial expediency of the remaining huge expenses, and that the assessee had failed to discharge the onus of proving the same.

7. Whether the CIT(A) has erred in deleting the disallowance of Rs.57,67,155/- out of total Car expenses of Rs.3,46,02,931 /- on the ground that the Directors &ad separately booked the personal car expenses in respect of their luxury cars, thus completely overlooking the fact that the measly so-called personal car expenses to the tune of Rs.3,56,400/- in respect of 6 luxury cars could have barely covered even the annual insurance cost of the said cars.

8. Whether the CIT(A) has erred in deleting a very reasonable disallowance of Rs.57,67,155/- out of the car expenses, by overlooking the fact that a token separate accounting of personal expenses does not automatically prove the commercial expediency of the remaining huge expenses, and that the assessee had completely failed to discharge the onus of proving the same.

9. Whether CIT(A) has erred in deleting the addition of Rs.1,89,07,638/- on account of undisclosed business profits from trading and manufacturing of School Bags by admitting the evidence in the form of the order of Special Commercial Court (ADJ), Gurgaon under Rule 46A of the I.T. Rules without even caring to call for a report from the Assessing officer.

10. *Whether the CIT(A) has erred in deciding the issue of undisclosed business profits merely by relying upon the order of Special Commercial Court (ADJ) Gurugram, and by completely overlooking the findings of exhaustive enquiries carried out by the AO during the assessment proceedings as duly recorded in the assessment order.*

11. *Whether the CIT(A) has erred in deciding the issue merely by relying upon the order of Special Commercial Court (ADJ) Gurugram, but by ignoring the fact that filing of civil suit against one of the vendors, clearly indicates that the profit rate in the given business deal was much higher, and that the willful non-disclosure of the given suit/claim, even to its Chartered Accountants, even when the assessee company happens to be a public limited company, casts a whole lot of suspicion on the assessee's intention of disclosing true and correct profits.*

12. *Whether the CIT(A) has erred in applying GP rate of 7% on Trading of Fabric and granting relief of Rs. 1,70,63,923/- to the assessee by wrongfully observing that purchases and sales were vouched for and parties traded had given details of transportation too, without bringing anything on record, through enquiries or otherwise, to controvert the detailed findings given by the AO through extensive enquiries conducted during assessment proceedings.*

13. *Whether the CIT(A) has erred in giving relief of Rs. 1,70,63,923/- to the assessee, especially when the assessee specifically mentioned during the assessment proceedings that trading of Fabric was done with the aim to achieve/cross Rs.500 crores turnover/ benchmark with the ultimate objective to fulfill its commitment to corporate investors and banks etc. thus giving rise to questions as to whether genuine business was ever done by the assessee or only paper entries were made in order to fulfill its commitment towards banking and other financial institutions.*

14. *Whether the CIT(A) has erred in giving relief of Rs. 1,70,63,923/- to the assessee by not appreciating the fact that none of the transacting parties/concerns involved came forward to certify or authenticate the assessee's claim about the transactions between them before the AO.*

15. Whether the CIT(A) has erred in deciding the GP rate at 7%, without offering any basis and justification for the same."

ITA No. 1979/Del/2018 (Revenue Appeal)

Disallowance u/s 14A:

4. During the year, the assessee has not received any dividend, hence we hold that in the absence of any dividend received and claim of exempt income, no disallowance u/s 14A is called for.

Foreign Travel Expenses:

5. The AO disallowed the foreign travel expenses of Rs 57,35,855/- out of the expenses claimed by the assessee of Rs.1.58 crores on the grounds that the assessee could not produce any documentary evidences inspite of providing multiple opportunity. The AO held that the employees visited certain countries wherein there was no business dealing neither import nor export of goods as taken place during the year.

6. The Id. CIT(A) deleted the addition on the grounds that all the details have been provided and the foreign travel is a business contingency.

7. Heard the arguments of both the parties and perused the material available on record.

8. We have gone through the para no. 3/3.1 of the Assessment Order. It reflects the details of employees name, designation, date of visit, and the countries visited. On perusal of the entire record, we find that the employees visited

countries namely, Nairobi, South Africa, Singapore, China, Tashkent, Denmark, Dhaka, France, Bangkok, Hong Kong, Dubai, Italy, USA, Canada, Sri Lanka. We find that the entire trips have been made by the employees and the Directors. There were no trips pertaining to any personal staff or relatives of the directors of the employees. All the tours have been made for the purposes of expanding the business for imports and exports. In the absence of any personal element or non-business purpose brought by the AO any tours undertaken, we hereby affirm the action of the Id. CIT(A) in deleting the addition.

9. Appeal of the revenue on this ground is dismissed.

Car Expenses:

10. The AO disallowed the car expenses on the grounds of personal use owing to non submission of any log books produced for verification of the purpose of the journeys performed by the company vehicles and the personal use of the cars by the directors cannot be ruled out. The Id. CIT(A) deleted the addition on the grounds that the details of the personally owned vehicle by the directors were obtained and examined. Since, the directors have also own the vehicles in their personal capacity, the allegation of the AO that the company vehicles were used for personal purpose in the absence of any tangible evidence cannot be sustained. The decision of the Id. CIT(A) is hereby affirmed.

11. Appeal of the revenue on this ground is dismissed.

ITA No. 1979/Del/2018**Admission of the additional evidences:****Deletion of Rs.1.89 Cr. – GP:****ITA No. 1235/Del/2018****Ground No. 1****Confirming of Rs.2.73 Cr.:**

12. These issues are interrelated. The Id. CIT(A) granted relief based on the additional evidences submitted u/s 46A [CIT(A) page 42] without referring the matter to the file of the AO and without calling for any remand report. The AO has been denied the legitimate right to furnish their comments on the additional evidences. Hence, the issue is being remanded back to the file of the Id. CIT(A) to call for a remand report and thereafter adjudicate the matter in accordance with the provisions of the Act.

ITA No. 1979/Del/2018**Trading Results of Fabrics – Rs. Rs.1,70,63,923/-****ITA No. 1235/Del/2018****Ground No. 2****Trading Results of Fabrics – Rs.64,11,300/-:**

13. These issues are interrelated. The AO made total addition of Rs. 2,40,70,400/- against the profit declared of Rs.5,95,185/- on account of sale of fabrics. The AO applied GP @ 28.97% on the total turnover of Rs.8,30,87,360/-.

14. The Id. CIT(A) held that the GP rate of 28.97% of footwear cannot be applied to the sale of fabric and held that GP @ 7% on the declared sale is acceptable and give a relief of

Rs.1,70,63,923/- to the assessee and confirmed an amount of Rs.64,11,300/-.

15. Having gone through the entire issue of purchase and sale of goods to the tune of Rs.8.3 Cr. and after examination of the material on record, we decline to interfere with the order of the Id. CIT(A) determining the GP @7%.

16. In the result, the appeals of the assessee and the Revenue are partly allowed for statistical purpose.

Order Pronounced in the Open Court on 08/02/2023.

Sd/-

(Yogesh Kumar US)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 08/02/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR