

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A.L.SAINI, AM

आयकर अपील सं./ITA No.229/SRT/2022

(निर्धारण वर्ष / Assessment Year: (2013-14)

(Physical Court Hearing)

Asstt. Commissioner of Income-tax, Central Circle-2, Room No.505, 5 th Floor, Aaykar Bhawan, Majura Gate, Surat-395001	Vs.	M/s Vasant Fabrics Pvt. Ltd., Plot No. 146, GIDC, Pandesara, Surat-394210
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCV 5908 Q		
(अपीलार्थी /Appellant)		(प्रत्यर्थी /Respondent)

निर्धारिती की ओर से /Assessee by : Shri Rasesh Shah, C.A

राजस्व की ओर से /Respondent by : Shri Vinod Kumar– Sr.DR

सुनवाई की तारीख/ **Date of Hearing** : **29/03/2023**

घोषणा की तारीख/**Date of Pronouncement** : **31/03/2023**

आदेश / ORDER

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by the Revenue pertaining to the assessment year 2013-14, is directed against the order passed by the Learned Commissioner of Income Tax(Appeals)-4, Surat [for short ‘CIT(A)’] dated 04.05.2022, which in turn arises out of an assessment order passed by the Assessing Officer (AO for short) u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide order dated 29.09.2017.

2. Grounds of appeal raised by the Revenue are as follows:-

*“[i] On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in passing an order u/s 154 of the Act dated 31.12.2021 manually and without generating DIN even though the case was not falling under the exceptions prescribed vide Para-3 of **Circular No.19/2019** issued by the CBDT and also erred in not regularizing the same within 15 working days of its issuance and hence the order u/s 154 of the Act dated 31.12.2021 passed by the ld. CIT(A) for reinstating the dismissed appeal shall be treated as invalid and shall be deemed to have never been issued and consequently the impugned order under appeal becomes non-est and bad in law.*

[ii] On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in reinstating the appeal by passing an order u/s 154 of the Act dated 31.12.2021 which, on the request of the assessee, was dismissed as withdrawn vide order dated

28.12.2020 which is against the law and there being no such enabling facts and circumstances of the case.

[iii] On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition of Rs.2,00,41,167/- made by the Assessing Officer by estimating the profit @ 20% on unaccounted job receipts of Rs.10,02,05,835/- to Rs.50,10,292/- by holding that it is reasonable to consider 5% as net profit of the suppressed job work charges as income for the year under consideration.

[iv] On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the net profit rate of 5% on job work receipts would be reasonable without appreciating the fact the Assessing Officer has made the estimating of gross profit after comparing the gross profit rate disclosed by the group concerns and other concerns engaged in the similar line of business and also considering the essential expenses required to be incurred by the assessee in this line of business and which must have already been debited in the accounts.

[v] On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in placing reliance on certain judicial pronouncements for estimating the profit without appreciating the overall facts of the case and modus operandi of earning unaccounted income unearthed during the course of search proceedings and elaborately discussed by the Assessing Officer in the assessment order.

[vi] It is, therefore, prayed that the order the Ld. CIT(A)-4, Surat may be set aside and that of the AO may be restored to the above extent.

[vii] The appellant craves leave to add, alter, amend and/or withdraw any ground(s) of appeal either before or during the course of hearing of the appeal.”

3. When this appeal of Revenue was called out for hearing, Ld. Counsel for the assessee invited our attention to the order dated 21.12.2022 passed by this Co-ordinate Bench of this Tribunal in Betex India Ltd. group cases in IT(SS)A Nos.71 to 74,77 to 80/SRT/2021 for AYs 2011-12 to 2014-15, ITA No.172 & 175/SRT/2021 for AY 2015-16, whereby the issue under consideration relating to addition in respect of unaccounted job work received were discussed and adjudicated , wherein 5% of alleged unaccounted job work addition was confirmed. The Ld. Counsel for the assessee submitted that the present Revenue's appeal is squarely covered by the aforesaid order passed by the Co-ordinate Bench of this Tribunal (supra) and copy of which was also placed before the Bench.

4. On the other hand, Ld. Sr-DR for the Revenue relied on the order of Assessing Officer and also stated that ground Nos.1 and 2 raised by the Revenue in present appeal is different which have not been adjudicated by the Co-ordinate

Bench of this Tribunal in assessee's own group cases (supra), therefore issues in the present appeal of Revenue is different and not squarely covered in favour of assessee by the order of this Co-ordinate Bench of the Tribunal (supra).

5. We see no reason to take any other view than the view so taken by the Division Bench of this Tribunal in assessee's own group cases (supra) vide order dated 21.12.2022, the Tribunal has *inter alia* observed as follows:

“11. We have heard the submissions of both the parties on merit. The ld. CIT-DR for the Revenue submits that during the course of search action conducted on 19.02.2015 in the group cases of Sumeet Industries Ltd. of Surat and huge incriminating evidence related to unaccounted job work receipt were found during said search action and statement of Dinesh Agarwal, accountant and Shri Rajkumar Somani, Director of Sumeet Industries Ltd. were recorded on oath under section 132. In the statement, the director of assessee admitted unaccounted job receipts, which were outside books of account and Department has proved with credible evidence that assessee has maintained two sets of books of account of job work and accounted job work separately. The assessee explained about the data of Puirchi.exe software by giving of colour of internal processing were to give mislead in fact to cover their act of evasion of tax by leading unaccounted job work. During the course of search action, it was clearly established that the assessee has created out unaccounted job work outside assessee's book. From the data retrieved from the computer that assessee received job work receipt of Rs.15.04 crores, was found, which were not accounted in the books of assessee for the year under consideration. The Assessing Officer after considering the entire material, past history of gross profit of assessee-company and its all group cases has reasonably estimated gross profit of 20% on rational and judicial manner in a detailed discussion. The Ld. CIT(A) restricted such addition to the extent of 5% in his order dated 26.07.2021. However, Ld. CIT(A) rectified his order by filing application of assessee and granted set off of credit of Rs.31 lakhs and thereby reduced substantial addition to the extent of Rs.15,04,36,907/-. The Ld. CIT-DR for the revenue prayed to reverse the order of Ld. CIT(A) dated 26.07.2021 as well as rectification order dated. 5.08.2021.

12. On the other hand, Ld. AR for the assessee submits that Assessing Officer made addition @ 20% of alleged suppressed job work receipt on comparison of books of account as well as data retrieved from Puirchi.exe software of assessee's computers. The Assessing Officer failed to appreciate the real nature of assessee's business. The Assessing Officer further failed to appreciate the re-processing work undertaken by assessee. The assessee explained that data extracted from Puirchi.exe software was not real and entire stock tallied with the books of account and there was no unaccounted stock or work-in-progress found during

the course of search action. The Ld. AR for the assessee submits that entire addition was liable to be deleted.

13. In alternative submission, Ld. AR for the assessee submits that average net profit in previous and subsequent year, the assessee was only 1.82% and the addition, if any, has to be restricted only to such gross profit and not the substantial part of alleged transaction.

14. In second alternative submission, the Ld. AR for the assessee submits that in assessee's group cases in Sitaram Prints Private Limited, which was also covered in the same search action, the Assessing Officer on a similar transaction made addition @ 20% of alleged unaccounted job work receipt, however, on appeal before Ld. CIT(A) the similar addition was restricted to 5%. And on further appeal before Tribunal in IT(SS)A No(s). 67-68/SRT/2021 and ITA No.157/SRT/2021 in the case of Sitaram Prints Private Limited Vs. DCIT, dated 17.08.2022, the action of CIT(A) in those appeals was upheld. So the issue raised in all the appeals / cross appeals are covered.

15. In rejoinder Ld. CIT-DR for the Revenue submits that order of Tribunal in the case of Sitaram Prints Private Limited (supra) is not helpful in the present set of appeals filed by assessee. As in those cases, the Revenue has not filed appeal before Tribunal due to low tax effect. And the order of Ld. CIT(A) was upheld for the reasons that Hon'ble Tribunal has no power to enhance such addition. However, in case of present assessee, the revenue has filed its appeal for seeking to restore the additions made by the assessing officer.

16. We have considered the rival submission of both the parties and have gone through the order of lower authorities carefully. We have also deliberated on various case law relied by lower authorities. We have also considered the entire material filed before us. We find that in the search action was carried out in the group cases of Sumeet Industries Limited Surat on 19.02.2015 being a part of same group, the assessee was also covered. We find that on similar set of fact, and on similar evidence, the Assessing Officer made addition in case of Sitaram Prints Private Limited (supra) in assessee's group case, covered in same search action, on similar unaccounted job work the assessing officer made addition @ 20% on similar unaccounted job work receipt. On appeal before Ld. CIT(A), who restricted the addition to the extent of 5% of similar unaccounted job work receipt. The combination of this bench in the case of Sitaram Prints Private Limited (supra) has passed the following order:

“9. We have considered the rival submissions of both the parties and have gone through the orders of the authorities below carefully. We have also deliberated on various case laws referred and relied by the Ld. CIT(A) in his order. We find that the Assessing Officer made addition of 20% on unaccounted job work charges by taking a view that the assessee has not shown actual job work done for the parties. If there was no processing

work were carried out for these parties, how such work is reflected in the data recovered from computer back up as reprocessing work. The Assessing Officer was also of the view that on comparison of the parties which are common in the books and data recovered from the computer back up, the job work done is very higher than job work reflected in the books of account. Such summary was prepared in the assessment order. The assessee claimed that reprocessing is internal process of organization and data maintained in Purchi.exe software is only for organization the how can reprocessing work be done after the one month of dispatch of finished goods. Such action shows that the claim of reprocessing is not genuine. On the basis of such discrepancies, the Assessing Officer was of the view that there are two different set of data related to job works maintained in the computer and data maintained in Purchi.exe software is not accounted in the books of account. The Assessing officer disallowed 20% of receipt of unaccounted job work by treating as 20% profit of such unaccounted job work.

10. As noted above, before the ld. CIT(A), the assessee has filed detailed written submission. The ld. CIT(A) after considering the submission of assessee noted that it is clear that the data found stored in file of Purchi.exe software does not match with the regular books of account, thus the Assessing officer has proved beyond doubt with detailed discussion in the assessment order that the data recorded in this file remains unaccounted. The documentary evidences in the form of invoices and job bills found, there were several differences between these documents, which the Assessing Officer has narrated in detail in the assessment order. The entries have been made from about 50 parties by the DDIT (Inv.) to verify the contention of assessee about reprocessing work from whom enquiries were made, but no one had stated that they have given any reprocessing work to the assessee. All these details were analysed by the Assessing Officer and proved beyond doubt that the assessee was indulged in activities of doing job work which remained unaccounted. Thus, the contention that no unaccounted job work was done by assessee was not accepted and the corresponding submission of assessee was rejected.

11. We find that the ld. CIT(A) on the alternative contention of addition for considering gross profit of assessee for last preceding years as well as electricity consumption and other expenditure was of the view that the Assessing Officer was not correct in making addition by taking gross profit and these direct expenditure. The contention of assessee was that only profit element should be taxed and not the addition @ 20% of job works of the whole receipt. The assessee claimed that 20% is too high and

is not real. The assessee submitted gross profit and net profit for six assessment years which was at 1.82% and the contention of assessee that it should not be more than average net profit of 1.82%. The ld. CIT(A) after considering the submission of assessee and by following the decision of Hon'ble Jurisdictional High Court in the case of CIT Vs President Industries and CIT Vs Samir Synthetics Mill (supra) and after compiling the turnover, net profit and gross profit ratio from A.Y. 2010-11 to 2015-16 held that the average net profit in all the years is 1.82%. The ld.CIT(A), accordingly restricted the addition of suppressed job work to the extent of 5% to the total turnover of Rs. 2.589 crores.

12. We independently examined the contention of both the parties and find that the Assessing Officer has given very detailed reasoning while making addition of 20% of unaccounted job charges. We further find that the ld. CIT(A) restricted the addition to the extent of 5% to the extent that only profit element embedded in such unaccounted receipt. It is settled law under the income tax proceeding that only income component is to be taxed and not the substantial part of the transaction. Considering the fact that the ld CIT(A) has already granted substantial relief to the assessee and directed to tax only to the extent of 5% of Rs.2.589 Crore. In our view the ld CIT(A) has already granted substantial relief to the assessee, which we affirm. Hence, we do not find any merit in further reducing the addition which has already been reduced substantially by the ld. CIT(A). Therefore, we do not find any justifiable reason to given further relief to the assessee.

*13. In the result, this appeal of is **dismissed.**"*

17. In the present set of appeals, Ld. CIT-DR for the Revenue specifically argued that in case of Sitaram Prints Private Limited (supra) there was no cross-appeal filed by Revenue for the want of tax effect, therefore the Tribunal was unable to enhance the ratio of disallowance restricted by Ld. CIT(A). We find that the Ld. CIT(A) while restricting the addition to the extent of 5% of alleged unaccounted job work receipt followed by the decision of Hon'ble jurisdictional High Court in the case of President Industries (supra), wherein it was held that "on the issue of suppression of said consideration only the addition to the extent of profit element may be made". We are also of the view that wherein there is no fool proof of evidence of unaccounted sales or independent material to substantiate such allegation, only profit element to avoid the possibility of revenue leakage is sufficient to meet the ends of justice and not the substantial part of the disputed transaction. Therefore, we are not inclined to enhance the disallowance of alleged unaccounted job work receipt by assessee. Hence, ground No.1 to 4 raised by Revenue are dismissed.

18. Considering the fact that we have upheld the action of ld CIT(A) hence, sole ground of appeal raised by assessee in its appeal is also dismissed. In the result, assessee's appeal is dismissed.

19. Ground No.5 and 6 in Revenue's appeal relate to further reducing the disallowance in rectification order under section 154 of the Act passed by Ld. CIT(A) in granting credit of additional income of Rs.31 lakh declared by assessee while filing return of income. The Ld. CIT-DR for the Revenue submits that Ld. CIT(A) erred in granting set off / credit of income declared by assessee in response to notice under section 153A of the Act. The Ld. CIT-DR for the Revenue submits that no such ground raised by assessee at the time of filing appeal before First Appellate Authority. The Ld. CIT(A) exceeded his jurisdiction while rectifying the order under section 154 of the Act.

20. On the other hand, Ld. AR for the assessee submits that assessee has specifically in para-29 of its written submission clearly stated that while filing its return of income, in response to notice under section 153A, assessee made voluntary disclosure in its return of income, on the basis of estimated profit as net undisclosed business income and hence eligible for credit / telescoping of such income, which ought to have been given by Assessing Officer and such facts were brought to the notice of Ld. CIT(A) by filing return of income. The Ld. CIT(A) after perusal of record and considering the plea taken raised by assessee in its written submission and find that contention of assessee was factually correct as specifically recorded in **para-2** of rectification order under section 154 of the Act that in the original return filed on 27.09.2011, the assessee shown (offered) taxable income of Rs.1.76 crores. However, in response to notice under section 153A after search action conducted, the assessee filed return of income on 23.03.2016 showing return of income at Rs.2.07crores. Thus, the assessee has shown additional income of Rs.31 lakhs and mistake apparent was accepted by Ld. CIT(A) and passed order under section 154 of the Act. The Ld. AR for the assessee, thus, supported the order of Ld. CIT(A) passed under section 154 of the Act dated 05.08.2021.

21. We have considered the rival submission of both the parties and have gone through the order of ld CIT(A) carefully. We find that there is no dispute that assessee while filing return of income under section 139(1) on 27.09.2011 declared income of Rs.1.76 crores. However, in response to notice under section 153A the assessee offered / declared income at Rs.2.07 crores. Thus, the assessee offered additional income of Rs. 31 lacks and case of assessee is that there was voluntary disclosure of undisclosed business income and was eligible for telescoping of such income. We find that only issue in the assessment order was with regard to unaccounted job work receipt. The addition was made on account of estimated profit of unaccounted job work receipt. Initially, Assessing Officer made addition @ 20% of such impugned unaccounted job charges. On appeal, which was restricted @ 5% of the total disputed unaccounted job work receipt by

*Ld. CIT(A). We find that Ld. CIT(A) on filing application under section 154 of the Act by assessee on account of additional business income, granted credit of such additional income. The ld CIT(A) thus, granted set of income, which was voluntarily offered by the assessee in response to notice under section 153A, to which the assessee is legally eligible. Thus, we do find any reasons for interference in the order passed by Ld. CIT(A). Hence, ground No.5 & 6 of Revenue's appeal is **dismissed.**"*

6. As the issue is squarely covered in favour of assessee by the order of the Co-ordinate Bench of this Tribunal in Betex India Ltd. group cases (supra) and there is no change in facts and law and the Revenue is unable to produce any material to controvert the aforesaid findings of the Co-ordinate Bench of this Tribunal (supra) and therefore respectfully following the binding precedent we dismiss the Revenue's appeal.

7. We note that ground Nos.1 and 2 raised by the Revenue pertain to Section 154 of the Act and Revenue has not filed appeal before Tribunal against the order u/s 154 passed by Ld. CIT(A), therefore these grounds cannot be adjudicated, hence ground Nos. 1 and 2 are dismissed in above terms.

8. In the result, appeal filed by the Revenue is dismissed.

Order pronounced on 31/03/2023 by placing the result on the notice board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat/दिनांक/ Date: 31/03/2023

Dkp Outsourcing Sr.P.S.

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

By Order

// True Copy //

Senior Private Secretary/Private
Secretary/Assistant Registrar,
ITAT, Surat