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

BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 1574/Del/2020
(Assessment Year : 2015-16)

New Delhi Export House 26-A, Hanuman Lane, Connaught Place, New Delhi-110 001 **PAN No. AACFN 5373 M**	Vs.	JCIT Special Range-18, New Delhi
(APPELLANT)		**(RESPONDENT)**

Assessee by	Shri S. Sadhu, C.A. Shri Jatin Proothi, C.A.
Revenue by	Shri S. L. Anuragi, Sr. D.R.

Date of hearing:	01.05.2023
Date of Pronouncement:	08.05.2023

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 21.02.2020 of the Commissioner of Income Tax (Appeals)-18, New Delhi relating to Assessment Year 2015-16.

2. Brief facts of the case as culled out from the material on record are as under:-

3. Assessee is a partnership firm stated to be engaged in the business of manufacturing of ladies garments. Assessee filed its return of income for A.Y. 2015-16 on 30.09.2015 declaring income of Rs.5,56,10,440/-. The case of the assessee was selected for scrutiny and thereafter, assessment was framed u/s 143(3) of the Act determining the total income at Rs.5,86,93,270/-. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 21.02.2020 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds:

> *"1. That on the facts and law involved the Ld. Commissioner of Income Tax (Appeals) [Ld. CIT(A)] erred in confirming the adhoc disallowance of Rs 5,33,592/- (being 50% of total expenditure) made by Ld. Assessing officer [Ld. AO] for alleged disallowance on account of design & development expenditure incurred by the appellant by alleging 50% of the expenditure incurred as non genuine and balance as genuine.*
>
> *1.1 That the disallowance as made by Ld. AO and confirmed by Ld. CIT(A) is based on erroneous views and / or non-appreciation of the facts and law involved and without properly considering the submissions and material on record. As such too the disallowance is unwarranted and not capable of being sustained.*
>
> *2. That on the facts and law involved the Ld. Commissioner of Income Tax (Appeals) [Ld. CIT(A)] erred in confirming the addition of Rs 25,49,235/- made by Ld. Assessing officer [Ld. AO] for alleged addition on account of suppressed income from sale of Katran/Scrap Material. The addition was made by Ld. AO solely based on a random search conducted on the google/internet for rate of scrap per kg resulting in a hypothetical income being added which was*

confirmed by Ld. CIT(A) ignoring the details related to sale of scrap sales including copies of invoices available on record. It is a well settled proposition that Income Tax cannot be levied on hypothetical income.

2.1 *That the addition as confirmed by the Ld. CIT(A) is based on erroneous views and / or non-appreciation of the facts and law involved and without properly considering the submissions and material on record. Binding case laws in appellant's favor has not been discussed and rebutted. As such too the addition is unwarranted and not capable of being sustained.*

3. *That the Ld. AO has erred in converting the assessment proceedings from Limited Scrutiny to Complete Scrutiny without following the binding directions/instructions of the CBDT issued vide Instruction number 05/2016 dated 14.07.2016 and 20/2015 dated 29.12.2015.*

3.1 *Validity of assessment u/s 143(3) was challenged before Ld. CIT(A) based on the fact that return of income was selected for scrutiny assessment for limited scrutiny on four issues and the Ld. AO has completed the assessment by making disallowance/additions on other issues without following the binding instructions of the CBDT.*

4. *That on the facts and law involved the entire assessment is liable to be quashed as the assessment order along with the demand notice was served on the assessee after the expiry of 21 months from the end of the assessment year i.e. after the expiry of limitation period.*

5. *That the assessment as made and the order of the Ld. CIT(A) are against law and facts of the case involved.*

6. *That the grounds of appeal as herein are without prejudice to each other.*

7. *That the appellant respectfully craves leave to add, amend, alter and / or forego any ground(s) at or before the time of hearing."*

4. **Ground No.1 and sub grounds** are with respect to the disallowance of Rs.5,33,592/-.

5. On perusing the Profit and Loss statement filed by the assessee, AO noticed that assessee had booked "Design & Development expenses" amounting to Rs.10,67,183/-. AO on perusing the details of the expenses noted that though assessee has claimed to have paid the Design & Development expenses to various parties but had submitted agreement of only one party. He further noted that no bills or invoices were provided in respect of Aarti Uppal, who is a related party of the firm. AO therefore considered 50% of the total design & development expenses to be not allowable and accordingly disallowed Rs.5,33,592/-.

6. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who upheld the order of AO by noting that the amount paid to the parties were related to the partners of the assessee firm and assessee had not furnished any evidence of professional qualification of the persons to whom the amounts were paid. CIT(A) after considering the submissions of the assessee, remand report and reply of the assessee upheld the order of AO. Aggrieved by the order of CIT(A), assessee is now before the Tribunal.

7. Before us, Learned AR reiterated the submissions made before the AO and CIT(A) and further submitted that assessee had

incurred similar expenditure towards "Design and Development charges" and had paid to the same persons in the preceding and succeeding years but no disallowance has been made by AO in the assessment orders framed u/s 143(3) of the Act of those years. In support of his aforesaid contention, he pointed to the chart of the payments made to the various persons in the A.Ys. 2013-14, 2014-15, 2015-16, 2016-17 & 2017-18 and submitted that the amount has not been disallowed in earlier and succeeding years. He also pointed to the assessment orders framed u/s 143(3) of the Act placed at page 167 to 182 of the paper book. He further submitted that to invoke the provisions of Section 40A(2)(a), AO has to prove that the transaction is not a *bonafide* or the value of goods and services are not in consonance with the fair market value. He submitted that no adverse material has been brought on record by the AO to demonstrate that the expenses are unreasonable or excessive in nature. He further submitted that in the computation of income filed by the respective recipient, the amount received from the assessee has been declared in their income and in such a situation also the amount paid by the assessee cannot be treated as bogus. He further submitted that on the ground of principal of consistency also the disallowance as confirmed by CIT(A) needs to be deleted. In support of its aforesaid contention, he also placed reliance on the decision of Hon'ble Apex Court in the case of **Radhasoami Satsang vs. CIT reported in193 ITR 321 (SC)** and the decision

in the case of **CIT vs. Excel Industries Ltd. reported in 358 ITR 295 (SC)**.

8. Learned DR on the other hand took us through the observations of AO and CIT(A) and supported their orders. On the contention of the Learned AR that following the principal of consistency no disallowance is warranted, he submitted that the principal of *res-judicata* is not applicable to the income tax proceedings and each income tax year is a separate assessment year. He thus supported the order of lower authorities.

9. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to the disallowance of Design and Development expenses. It is an undisputed fact that assessee had incurred Rs.10,67,187/- as design & development expenses and AO had disallowed 50% of the expenses amounting to Rs.5,33,592/- on adhoc basis. It is the contention of the assessee that similar expenses were incurred by the assessee in earlier and in subsequent years and amount was also paid to the same parties in those years but no disallowance of the expenses have been made by the AO while framing the assessment u/s 143(3) of the Act. The aforesaid contention of AR has not been controverted by Revenue. Learned AR has also pointed to the table tabulated in the synopsis which depicts that Aarti Uppal was paid Rs.6,00,000/- in A.Y. 2014-15 and Rs.6,00,000/- was also paid

in the year under consideration and for A.Y. 2016-17, she has been paid Rs.11,50,000/- and Rs.12,00,000/- in A.Y. 2017-18. He has further pointed that payment to paid Ms. Poonam Khanna in the year under consideration was Rs.1,38,000/-, which was far less than the payments made in the earlier years and same in the case of Ritika Khanna and Surindra Bountra. We, therefore, find force in the argument of the Learned AR that though the similar expenses were incurred by the assessee in earlier and subsequent years and payments to the parties which have been disallowed in the year under consideration was not higher in the year under consideration as compared to earlier and subsequent years. No disallowance of expenses have been made in those years. We further find that AO has also not brought on record any material to demonstrate that the payments made to the parties who are stated to be related parties are in excess of the amounts paid to other parties for similar service or are not *bonafide*. Before us, Learned DR has submitted that the principal of *res-judicata* is not applicable to the assessment proceedings and each assessment year has to be considered on standalone basis. We do not dispute the aforesaid preposition of Learned DR but at the same time the Hon'ble Supreme Court in the case of **Radhasoami Satsang vs CIT (1992) 193 ITR 321 (SC)** has held that even though principles of *res judicata* do not apply to income tax proceedings, but where a fundamental aspect permeating through different assessment years has been found as the fact one way or the other and the parties have allowed the position to be sustained by not

challenging the order, then it would not be appropriate to allow the position to be changed in the subsequent year. Considering the totality of the aforesaid facts and relying on the aforesaid decision rendered in the case of Radhasoami Satsang (supra), we do not find any justification in AO for disallowing the expenses on adhoc basis and which was upheld by CIT(A). We, therefore, set aside the addition made by AO. **Thus the ground of assessee is allowed.**

10. **Ground No.2 and sub grounds** are with respect to the addition of Rs.25,49,235/- on account of suppressed income from sale of Katran/Scrap material.

11. AO on perusing the Profit and Loss account statement noted that assessee had booked income from Scrap Sales amounting to Rs.8,16,618/-. AO was of the view that in the line of business of the assessee the Scrap/Waste cloth generated is huge. He also noted that the sale price of Scrap of Katran which was declared by the assessee was much lower than the market price. He thereafter conducted search on the internet and concluded that the sale price of scrap Katran ranged from Rs.30/Kg to Rs.75/Kg and the side cutting charges ranged from Rs.80/Kg to Rs.130/Kg whereas assessee has shown the sales price of the same at Rs.5/Kg and had sold Scrap of Katran at Rs.11.50/Kg. AO thereafter on the basis of the information gathered from the internet and on the basis of working noted in the order

determined the sale price of the scrap that ought to have been earned by the assessee at Rs.33,65,853/- and after giving the credit of the scrap sold by the assessee of Rs.8,16,618/- made addition of net amount of Rs.25,49,235/- on account of income received from the sale of Scrap/Waste. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who upheld the order of AO. Aggrieved by the order of CIT(A), assessee is now before the Tribunal.

12. Before us, Learned AR reiterated the submissions made before AO and CIT(A) and further submitted that addition has been made solely on the basis of random search conducted by the assessee on internet and which is without any basis. He further submitted that addition has been made purely on the basis of suspicion, surmises and conjectures and while presuming suppressed income, AO has ignored the actual quantity and price at which such Katran was actually sold by the assessee. He thereafter pointed to the table for various assessment years tabulated at page 12 & 13 of the synopsis and from that table, he pointed that the percentage of Katran to total sales in the year under consideration was 0.10% which is comparable to the percentage of Katran to total sales in other assessment years and no addition has been made by AO in the assessments framed u/s 143(3) in earlier or subsequent years. He therefore submitted that merely on the basis of suspicion the addition on account of

hypothetical income cannot be made and therefore is bad in law and therefore it be deleted.

13. Learned DR on the other hand supported the order of lower authorities.

14. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to the addition made on account of alleged waste generated known as "Katran". It is an undisputed fact that assessee had shown income from Scrap Sales at Rs.8,16,618/- and according to AO assessee has understated the Scrap Sales. According to AO on the basis of the calculation worked out by AO in the table, the value of scrap sales should have been to the extent of Rs.33,65,853/-. We find that the basis of working out the alleged sale value of Scrap that assessee ought to have earned is only on the basis of the search conducted by the AO on the internet. The AO has not brought any material on record to demonstrate that the Scrap Sales found by him on the internet by various other entities were engaged in dealing with similar business as of the assessee. Further AO has also not stated the basis of the selection of parties, the name of the parties on the basis of which he has concluded the sale of scrap to be understated. Further assessee has also demonstrated the percentage of sale of Scrap in various preceding and succeeding assessment years and percentage of waste to the sale in the year

under consideration are in the same range as that of earlier and subsequent years. We find that AO has not brought on record any concrete material to demonstrate that the sale of Scrap recorded by the assessee is understated. On the contrary he has presumed it on the basis of the working made by him on the basis of research undertaken on the internet. Considering the totality of the aforesaid facts, we are of the view that AO was not justified in making the estimation of Scrap Sales. We therefore set aside the addition made by AO and upheld by CIT(A). **Thus the ground of assessee is allowed.**

15. Since we have decided the issue on merits, we are of the view that other grounds raised by assessee challenging the assessment order has been rendered academic and requires no adjudication and therefore not adjudicated.

16. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 08.05.2023

Sd/-	**Sd/-**
(ANUBHAV SHARMA) **JUDICIAL MEMBER**	**(ANIL CHATURVEDI)** **ACCOUNTANT MEMBER**

Date:- 08.05.2023
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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI