

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI
BEFORE Shri C.M. Garg, Judicial Member**

ITA No. 277/Del/2022
(Assessment Year: 2011-12)

Vardhman Infracab Pvt. Ltd, K43, Green Pak (Man), Delhi	Vs. ITO, Ward-26(1), New Delhi
(Appellant)	(Respondent)
PAN: AACCV5663K	

Assessee by :	Shri Priyansh Jain, CA
Revenue by:	Shri Om Parkash, Sr. DR

Date of Hearing	06/04/2023
Date of pronouncement	30/06/2023

ORDER

1. This is an appeal filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi dated 17.12.2021 for AY 2011-12.

2. The Id Assessee's representative (AR) submitted that except ground No. 7 and 8, the assessee does not want to press other grounds, hence, same are dismissed as not pressed.

3. Remaining effective ground Nos. 7 and 8 for adjudication reads as under:-

"7. That having regard to the facts and circumstances of the case on without prejudice basis, Ld. A.O. has erred in law and in facts in not allowing inter- head set-off of losses while computing the total income of the assessee.

8. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234B, 234D and 244A of Income Tax Act, 1961 and initiating penalty proceedings against the assessee."

4. The Id counsel submitted that the AO at page No. 2 noted that the assessee have made sales to two entities namely M/s. Riddhi Siddhi Clothing Co. Pvt. Ltd and M/s. Star Delta Traders Pvt. Ltd amounting to

Rs. 47,39,983/- and also submitted copies of invoices of sale of fabric to said two entities. Ld counsel submitted that the said sales were shown by the assessee in its profit and loss account including the total sales shown in the books. The Id AR submitted that the assessee submitted copies of VAT return, copy of bank statement establishing that the sale consideration was received through banking channel by the assessee. The Id AR vehemently pointed out that there is no defect or doubt in the transaction of sale undertaken by the assessee with the said two firms therefore, addition was required to be made in the hands of the assessee, therefore, addition made by the AO u/s 68 of the Act may kindly be deleted.

5. Replying to the above Id Sr. DR submitted that merely because the assessee received sale consideration through banking channel does not make the transaction sacrosanct. He further submitted that the proposition of Hon'ble Delhi High Court in the judgment dated 09.04.2020 in ITA No. 613/2010 in the case of CIT Vs. Kailash Jewellery House ITA 613/2010 is not applicable to present case as the facts and circumstances of the present case are quite different and distinguishable from the facts of the said case. The Id Sr. DR also submitted that the AO was right in making the addition u/s 68 of the Act as the assessee company failed to discharge its onus to establish beyond doubt the money received and credited in the accounts against the sales to said two companies was nothing but introduction of its own unaccounted money through banking channel in its books giving a colour of genuine. The Id Sr. DR urged to uphold the orders of the authorities below.

6. Placing rejoinder to the above the Id AR drew our attention to page 54 to 137 of the assessee's paper book particularly at page 54 to 96 and submitted that the assessee made sales to said two parties which was included in the profit and loss account under the head of sales and the said consideration was received through banking channel against the bills raised by the assessee. He further submitted that the VAT return and other documentary evidence and books of account clearly shows

that the transaction of sales with said two parties have been duly recorded in the books of account and therefore, there is no iota of any doubt regarding explanation of the assessee therefore, in view of the judgment of jurisdiction Hon'ble Delhi High Court in the case of CIT Vs. Kailash Jewellery House (supra) the orders of the authorities below may kindly be set aside and the addition made by the AO u/s 68 of the Act may kindly be dismissed.

7. On careful consideration the above submission, first of all from the assessment order I note that the AO has made addition u/s 68 of the Act by observing that the assessee company has failed to discharge its onus to establish beyond doubt that the money received against the sales from said two company is genuine and therefore, the explanation of assessee is not tenable. The AO also noted that the assessee has introduced its own unaccounted money through banking channels in its book giving a colour of genuine and thus the entire receipts were treated as unexplained income of assessee and the AO made addition u/s 68 of the Act. From the first appellate order I further found that the Id CIT(A) uphold the addition made by the assessee by following the judgment of Hon'ble Supreme Court in the case of PCIT Vs. NRA Iron & Steel Pvt. Ltd (2019) 412 ITR 161 (SC) dated 05.03.2019 by observing that the AO has right in making addition in the hands of the assessee.

8. From the copies of the documentary evidence filed by the assessee spread over 137 pages I note that the assessee before the AO as well as before the Id CIT(A) submitted that the copy of relevant ledger accounts, invoices, copy of bank statement and copy of sales tax return of Haryana VAT. The assessee also filed copy of order vide dated 28.03.2014 passed by VAT department accepting the sales/ purchases made by the assessee, sale and purchase ledger of cotton fabric during the year under consideration. The assessee also filed copies of certificate of incorporation, MCA master data, copy of signatory details etc of both the entities i.e. Riddhi Siddhi Clothing, M/s. Star Delta Traders Pvt. Ltd at pages 91 to 96 of assessee's paper book.

9. Above documentary evidences shown that the assessee has affected sales to sales to said two parties during the financial period which was duly recorded in its books of account and received sales consideration through banking channels. The transactions of sales also shown in the VAT returns and copy of VAT return available at page 70 of assessee's paper book also supports the contention of assessee that the VAT department of Haryana Govt has accepted the purchase and sales for relevant period without any dispute. The assessee has also shown the identity of alleged purchase by way of filing their certificate of incorporation, MCA master data, company signatory details etc established the identity, address and their PAN and the authorities have not raised any doubt regarding this fact. So far as the allegation of the AO that the assessee has introduced its own unaccounted money in the garb of transaction of sales is concerned I am unable to see any positive adverse evidence against the assessee establishing the said fact thus, the AO was not validly entitled to treat the amount of sale consideration credited to the books of account of the assessee and which was included in the total amount of sales shown by the assessee in its profit and loss account, as unexplained income of the assessee from undisclosed sources.

10. In the case of JM Wires Industries Vs. CIT reported as (2012) 18 taxmann.com 297 (Del) as relied by the Id AR, it has been held that the amount added to assessee's income as bogus sale was liable to be deducted from the total sale figure shown in the books of account. To my humble understanding such exercise would be revenue neutral and the reduction of sales figure from the sales shown in the books would certainly reduce the income of the assessee and the addition on sale account of same figure to the account increase the taxable income of the assessee.

11. In the present case the Id Sr. DR have not controverted the fact that the main ground of sale of Rs. 47,39,983/- have been included by the assessee in its amount of sale shown in its profit and loss account.

The jurisdictional Hon'ble Delhi High Court in the case of Kailash Jewellery (supra) under identical facts and circumstances of the present case held as follows:-

"2. On examination of the orders passed by the Assessing Officer, the Commissioner of Income-tax (Appeals) and the impugned order passed by the Tribunal, we find that both the appellate authorities below have disagreed with the Assessing Officer and have deleted the said addition on the ground that the cash sales were duly recorded in the books and that they had found place in the profit and loss account.

3. The Commissioner of Income-tax (Appeals) had returned a finding that the stock and cash found at the time of search had been examined by the Assessing Officer and was compared with the stock and cash position as per books. The stock and cash position as per the books had been arrived at after the effect of the aforesaid cash sales. The stock position as well as the cash position as per the said books had been accepted by the Assessing Officer. The Commissioner of Income-tax (Appeals) also noted that the appellant had furnished the complete set of books of accounts and the cash books and no discrepancy had been pointed out. The Assessing Officer had doubted the aforesaid sales as bogus and had made the aforesaid addition. However, the Commissioner of Income-tax (Appeals) as well as the Income-tax Appellate Tribunal returned findings of fact to the contrary.

4. The Tribunal also noted that the departmental representative could not challenge the factual finding recorded by the Commissioner of Income-tax (Appeals). Nor could he advance any substantive argument in support of his appeal. The Tribunal also observed that it is not in dispute that the sum of Rs. 24,58,400/- was credited in the sale account and had been duly included in the profit disclosed by the assessee in its return. It is in these circumstances that the Tribunal observed that the cash sales could not be treated as undisclosed income and no addition could be made once again in respect of the same."

12. In view of the foregoing discussion and considering the proposition by the jurisdictional Hon'ble Delhi High Court in the case of Kailash Jewellery (supra) and JM Wire (supra) I am inclined to hold that in absence of adverse positive material against the assessee to show that the assessee has introduced its own unaccounted money in the garb of same sales transaction showing sales from said two entities, the observation and conclusion drawn by the authorities below cannot be held as valid and sustainable for making and invoking deeming provision of section 68 of the Act per contra, the assessee successfully demonstrated by way of his speaking documentary evidences, the

impugned transaction of sale was duly recorded in his books of account and shown in the profit and loss account, VAT authorities have also accepted the purchase and sales of assessee including the impugned sales and the assessee has also demonstrates existence of said two entities by way of producing relevant documentary evidences. In such a situation I am compelled to hold that the addition made by the AO and sustained by the Id CIT(A) is nothing but merely based on surmises and conjectures without any adverse positive material against the assessee. On respectfully reading of judgment of Hon'ble Supreme Court in case of PCIT Vs. NRA (supra) I note that this case pertains transaction of share capita/ share application money which is not applicable in the facts and circumstances of the present case having distinguish and dissimilar factual position. Therefore, I respectfully note that the benefit of said judgment is not available for the revenue in the present case having distinguished and dissimilar facts.

13. In the result, ground No. 7 and 8 of assessee are allowed.

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

Order pronounced in the open court on 30/06/2023.

-Sd/-
(C. M. GARG)
JUDICIAL MEMBER

Dated: 30/06/2023

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi