

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "E": NEW DELHI**

**BEFORE**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 7668/Del/2019

Asstt. Year: 2014-15

&

ITA No. 7669/Del/2019

Asstt. Year: 2015-16

M/s. Modernistic Attire (P) Ltd., B-22, FF, Krishna Park Devli Road, Khanpur Delhi - 110 062 PAN AAJCM1650L	Vs.	DCIT, Central Circle- II, Gurgaon
(Appellant)		(Respondent)

Assessee by:	Dr. Rakesh Gupta, Advocate Shri Shery Jain, Advocate
Department by:	Shri Subhra Jyoti Chakraborty, CIT-DR
Date of Hearing:	09.08.2023
Date of pronouncement:	09.08.2023

**ORDER**

**PER ASTHA CHANDRA, JM**

The appeals filed by the assessee arise out of the common order dated 23.07.2019 of the Ld. Commissioner of Income Tax (Appeals)-3, Gurgaon ("**CIT(A)**") pertaining to Assessment Year ("**AY**") 2014-15 and 2015-16. Since the grounds raised in both the appeals are similar, these are being disposed of by this common order.

2. The assessee has raised the following common grounds:-

**AY: 2014-15**

- “1. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in assuming jurisdiction u/s 153C and that too for this year and further erred in passing the impugned assessment order, more so when 'satisfaction' has not been recorded by AO of the searched person and when there was no incriminating document was found.*
2. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in assuming jurisdiction and framing the impugned assessment order u/s 153C, is bad in law and against the facts and circumstances of the case and the same is not sustainable on various legal and factual grounds.*
3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in exercising his jurisdiction in making addition of Rs.1,52,218/- (i.e. 5% of Rs. 30,44,368/-) on account of alleged commission/brokerage as business income and that too without giving show cause notice in this regard and impugned addition made by Ld. CIT(A) is bad in law as no incriminating material has been found as a result of search warranting such addition and by recording incorrect facts and findings and merely on the basis of surmises and conjectures and without giving the opportunity of being heard and without observing the principles of natural justice.*
4. *That in any case and in any view of the matter, action of Ld. CIT(A) in making addition of Rs.1,52,218/- on account of alleged commission/brokerage as business income, is bad in law and against the facts and circumstances of the case and the same is outside the purview of the impugned proceedings u/s 153C of the Act.*
5. *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 rejecting the books of accounts u/s 145(3) of the Act.*
6. *That in any case and in any view of the matter, addition made by Ld. CIT(A) in the impugned order are beyond jurisdiction and illegal also for the reason that these could not have been made since no incriminating material has been found as a result of search.*
7. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in passing the impugned assessment order without there being requisite approval in terms of section 153D and in any case approval if any is*

*mechanical without application of mind and is no approval in the eyes of law.*

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 of Income Tax Act, 1961.*
9. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.*

**AY: 2015-16**

- “1. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in assuming jurisdiction u/s 153C and that too for this year and further erred in passing the impugned assessment order, more so when 'satisfaction' has not been recorded by AO of the searched person and when there was no incriminating document was found.*
2. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in assuming jurisdiction and framing the impugned assessment order u/s 153C, is bad in law and against the facts and circumstances of the case and the same is not sustainable on various legal and factual grounds.*
3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in exercising his jurisdiction in making addition of Rs.8,58,276/- (i.e. 5% of Rs.1,71,65,521/-) on account of alleged commission/brokerage as business income and that too without giving show cause notice in this regard and impugned addition made by Ld. CIT(A) is bad in law as no incriminating material has been found as a result of search warranting such addition and by recording incorrect facts and findings and merely on the basis of surmises and conjectures and without giving the opportunity of being heard and without observing the principles of natural justice.*
4. *That in any case and in any view of the matter, action of Ld. CIT(A) in making addition of Rs.8,58,276/- on account of alleged commission / brokerage as business income, is bad in law and against the facts and circumstances of the case and the same is outside the purview of the impugned proceedings u/s 153C of the Act.*

5. *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 rejecting the books of accounts u/s 145(3) of the Act.*
6. *That in any case and in any view of the matter, addition made by Ld. CIT(A) in the impugned order are beyond jurisdiction and illegal also for the reason that these could not have been made since no incriminating material has been found as a result of search.*
7. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in passing the impugned assessment order without there being requisite approval in terms of section 153D and in any case approval if any is mechanical without application of mind and is no approval in the eyes of law.*
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 of Income Tax Act, 1961.*
9. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*

3. It is a search case. Search was conducted on 29.04.2015 at the various premises in the Orient Craft Group of cases under section 132 of the Income Tax Act, 1961 **(the “Act”)**. At the premises of M/s. Orient Craft Ltd. 7 D, Maruti Industrial Area, Sector -18, Gurgaon, computerized books of account and hard copy of Trial Balance of the assessee were found and seized. After recording necessary reasons in the case of M/s. Orient Craft Ltd. and in the case of the assessee notice(s) under section 153C r.w. section 153A of the Act were served upon the assessee. In reply, the assessee requested to treat its return(s) filed on 22.09.2014 and 24.09.2015 for AY 2014-15 and 2015-16 respectively as return(s) filed in response to above notice(s). During assessment proceedings the assessee filed details which were examined and placed on record. The Ld. AO concluded in para 6.1 of his order that the assessee is a paper entity operated by the owners of M/s. Orient Craft Ltd. for the purposes of evasion of taxes. He also rejected the books of account of the assessee under section 145(2) of the Act. The Ld. AO

made substantive assessment in the hands of M/s. Orient Craft Ltd. in both the years and added the expenses of Rs. 30,44,368/- and Rs. 1,71,65,521/- booked by the assessee in AY 2014-15 and 2015-16 respectively on protective basis.

4. Aggrieved, the assessee filed appeal before the Ld. CIT(A) who confirmed the addition on substantive basis in the hands of M/s. Orient Craft Ltd. and deleted the protective addition in the hands of the assessee in both the AYs. Further, in para 7.3.2 of his appellate order, the Ld. CIT(A) observed as under:-

*“In view of the general practice as seen in the case of entry operators, the commission / brokerage paid to the appellant company is estimated at 5% and addition of Rs. 2,03,411/- to the business income of the appellant on account of the same made by the AO in AY 2014-15 is sustained to that extent.*

*Similarly, addition to the extent of 5% on the total sales booked in the name of M/s. Orient Craft Ltd. is also confirmed in the case of the following assessee on the grounds discussed in detail above:*

3.	M/s. Modernistic Attire Pvt. Ltd.	AY 2014-15	5% of Rs. 30,44,368	Rs. 1,52,218
4.	M/s. Modernistic Attire Pvt. Ltd.	AY 2015-16	5% of Rs. 1,71,65,521	Rs. 8,58,276

5. Dissatisfied, the assessee is in appeal before the Tribunal in both the AYs raising common grounds.

6. The Ld. AR submitted that in the hands of the assessee protective assessment has been made as revealed in para 7.1 of the Ld. AO's order. Substantive assessment has been made in the hands of M/s. Orient Craft Ltd. It is pointed out that substantive assessment has been deleted by the Tribunal in the hands of M/s. Orient Craft Ltd. A copy of the Tribunal's order in ITA No. 3311/Del/2019 rendered on 24.09.2021 has been placed on record. Para 41 to 49 (Internal pages 27 to 40) thereof refer. The parties mentioned therein include M/s Trendy Attire Pvt. Ltd., Sh. Subhash Chander Gupta, M/s. Starline Clothing (P) Ltd. and Fashionable Attire (P)

Ltd. In these cases too substantive addition stands deleted by the Tribunal. The Ld. AR placed on record the decision of the Tribunal in the aforesaid cases. It is submitted by the Ld. AR that the Ld. CIT(A) had passed a common order in all the above cases. Our attention was drawn to para 5.2 & 6 of the Tribunal's order in ITA No. 7654, 7655 & 7656/Del/2019 dated 17.07.2022 in the case of Shri Subhash Chander Gupta wherein the Tribunal recorded a clear finding that the job work charges incurred by M/s. Orient Craft Ltd. through the assessee's in those cases were genuine. The Ld. AR therefore argued that protective assessment in the case of the assessee also deserves to be deleted in both the AYs involved.

7. The Ld. DR did not advance any argument on the legal issues raised by the assessee in the grounds. He, however conceded that the issue on merits is covered in favour of the assessee by the decision of the Co-ordinate benches of the Tribunal.

8. We have heard the Ld. Representative of the parties and perused the record. We observe that as argued by the Ld. AR the Tribunal in its decision in ITA No. 3311/Del/2019 for AY 2014-15 and in ITA No. 3312/Del/2019 for AY 2015-16 both dated 24.09.2021 deleted the substantive additions made in the hands of M/s. Orient Craft Ltd. by observing in para 49 and 21 as under:

*"49. In view of the above pleadings and evidences filed by the assessee the disallowance made in the assessment order and confirmed by CIT(A) is not sustainable on merit. Assessee has proved that the material was purchased from the vendors involved here and payments have been made through banking channel. Other evidences as referred clearly establish the purchase made by the assessee. We do not want to discuss each and every evidence and it would suffice to hold that in the light of these evidences which have not been rebutted with the help of any cogent material, purchases made by the assessee from the above said vendors cannot be disbelieved. The adverse observations made by the A.O. in the assessment order have been met by the assessee one by one and paper pages 1702-1708 reproduced also above by us and we have taken ourselves to these adverse observations and response of the assessee and we agree with the Ld. Counsel for the assessee that the adverse observations made by the A.O. are not of substance and misplaced on facts. CIT(A) too has mentioned in his order the adverse observations of the A.O. only which in our opinion are misplaced on facts. Contention of CIT(A) that evidence filed by the assessee self-serving documents and circumstantial evidence leads to the conclusion of A.O. It would be enough for us to say that voluminous documentary evidences filed by the assessee are clearly establishing the genuineness of purchases fabric from M/s Super Connection India P. Ltd. & other vendor companies. Other indicators*

*such as percentage ratio of material to sale etc also establish the genuineness of the purchases. We do not agree with the observations made by the first appellate authority. In our considered opinion, assessee has been successful to discharge the burden of proving the purchase from M/s Super Connection India P Ltd. & other vendor companies. In the result, ground no. 11 to 14 of the assessee's appeal of the assessee are allowed and the aggregate addition of Rs. 28,33,20,906/- is deleted."*

*"21. In view of the above pleadings and evidences filed by the assessee the disallowance made in the assessment order and confirmed by CIT(A) is not sustainable on merit. Assessee has proved that the material was purchased from the vendors involved here and payments have been made through banking channel. Other evidences as referred clearly establish the purchase made by the assessee. We do not want to discuss each and every evidence and it would suffice to hold that in the light of these evidences which have not been rebutted with the help of any cogent material, purchases made by the assessee from the above said vendors cannot be disbelieved. The adverse observations made by the A.O. in the assessment order have been met by the assessee one by one and paper pages 1873-1878 reproduced also above by us and we have taken ourselves to these adverse observations and response of the assessee and we agree with the Ld. Counsel for the assessee that the adverse observations made by the A.O. are not of substance and misplaced on facts. CIT(A) too has mentioned in his order the adverse observations of the A.O. only which in our opinion are misplaced on facts. Contention of CIT(A) that evidence filed by the assessee self-serving documents and circumstantial evidence leads to the conclusion of A.O. It would be enough for us to say that voluminous documentary evidences filed by the assessee are clearly establishing the genuineness of purchases fabric from M/s Super Connection India P. Ltd. & other vendor companies. Other indicators such as percentage ratio of material to sale etc also establish the genuineness of the purchases. We do not agree with the observations made by the first appellate authority. In our considered opinion, assessee has been successful to discharge the burden of proving the purchase from M/s Super Connection India P Ltd. & other vendor companies. In the result, ground no. 7 to 10 of the assessee's appeal of the assessee are allowed and the aggregate addition of Rs. 7,67,79,726/- is deleted."*

8.1 It is, therefore, obvious that once it is held by the Tribunal that the purchases made by M/s. Orient Craft Ltd. from the assessee were genuine, protective addition in the hands of the assessee in both the AYs is not sustainable. As a sequel, the order of the Ld. CIT(A) making addition on account of alleged commission/brokerage as business income in the hands of the assessee in AY 2014-15 and 2015-16 cannot be sustained.

9. Accordingly, common grounds No. 3 & 4 of the assessee are decided in favour of the assessee on merits in both the AYs involved. Other legal grounds No. 1,2,5,6 & 7 are not being adjudicated relief having been granted to the assessee on merits.

10. Common Ground No. 8 regarding charging of interest under section 234B of the Act is consequential.

11. In the result, appeals of the assessee for AY 2014-15 and 2015-16 are allowed.

**Order pronounced in the open court on 9<sup>th</sup> August, 2023.**

**Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**sd/-  
(ASTHA CHANDRA)  
JUDICIAL MEMBER**

Dated: 09/08/2023

***Veena***

Copy forwarded to -

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

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	28.08.2023
Date on which the typed draft is placed before the dictating Member	28.08.2023
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	