

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES : E : NEW DELHI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA Nos.7672 & 7673/Del/2019  
Assessment Years: 2013-14 & 2014-15

Mohinder Kumar Garg,  
C/o M/s RRA TAXINDIA,  
D-28, South Extension Part I,  
New Delhi.

Vs DCIT,  
Central Circle-II,  
Gurgaon.

PAN: AAJPG8652K

(Appellant)

(Respondent)

Assessee by : Dr. Rakesh Gupta, Advocate &  
Shri Deepesh Garg, Advocate  
Revenue by : Sh. Subhra Jyoti Chakraborty, CIT, DR  
Date of Hearing : 23.11.2023  
Date of Pronouncement : 30.11.2023

ORDER

PER ANUBHAV SHARMA, JM:

The appeals are preferred by the Assessee against the common order dated 23.07.2019 of the Commissioner of Income Tax (Appeals)-3, Gurgaon (hereinafter referred to as 'the Ld. First Appellate Authority or in short as ' the Ld. 'FAA') in appeal No.320, 345, 342, 337/CIT(A)-3/GGN/2017-18 arising out of an appeal before it against the orders dated 26.12.2017 passed u/s 153A r.w.s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act')

by the DCIT, Central Circle-II, Gurgaon (hereinafter referred to as ‘the Ld. AO’).

2. **Heard and perused the record.** The assessee is in appeal challenging the order of the ld.CIT(A) making an addition of Rs.6,24,261/- for AY 2013-14 and Rs.40,611/- for AY 2014-15 on account of alleged commission/brokerage as business income. The facts of the case and the determination of the issue by ld.CIT(A) can be conveniently picked up from para 7.3.2 and will be beneficial to reproduce the same herein below:-

*“7.3.2 I have gone through the assessment order and the submission of the appellant and following observations are made:-*

*(i) During the year under consideration in the case of appellant, the AO held that Sh. Mohinder Kumar Garg is an employee of M/s Orient Craft Ltd and has long association with the company. M/s Orient Craft Ltd has booked expenses on account of job work done by M/s Sai Exports, proprietor Sh. Mohinder Kumar Garg. However, the existence of M/s Sai Exports which had claimed to have done job work for M/s Orient Craft could not be proved. In view of the same, the AO held that the expenses booked by M/s Orient Craft with respect to M/s Sai Exports as bogus and hence made an addition of Rs. 5,48,51,943/- on this account in the case of M/s Orient Craft for the year under consideration i.e. AY 2012-13.*

*(ii) Further, the AO made an addition of Rs. 5,13,28,208/- on protective basis in the case of appellant on the ground that M/s Sai Exports is a paper entity operated by the owners of M/s Orient Craft Ltd for the purpose of booking bogus purchases and evasion of taxes.*

*(iii) CIT(A) in the appellate order in the case of M/s Orient Craft Ltd for the year under consideration confirmed the addition made by the AO on substantive basis of expenses of M/s Sai Exports booked by holding that this company was used for booking bogus purchase entries.*

*(iv) As the addition on substantive basis in the case of M/s Orient Craft Ltd for the year under consideration was confirmed, the addition made on protective basis cannot be sustained in the case of appellant for*

*all the years under consideration i.e. AY 2011-12, 2012-13, 2013-14 & 2014-15. However, if the substantive addition in case of M/s Orient Craft Ltd is deleted at any stage, the addition deleted here would revive.*

*(v) As it has been held that the appellant was only being used as conduit for booking bogus job work expenses by Orient Craft Ltd, it is apparent that the appellant would have been paid commission/brokerage for providing entries for bogus job work expenses.*

*In view of the general practice as seen in the case of entry operators, the commission/brokerage paid to the appellant is estimated at 5% and addition of Rs. 25,66,410/- to the business income of appellant on account of the same made by the AO in AY/2012-13 is sustained to that extent.”*

3. The ld. AR has submitted that vide ***ITA No.3310/Del/2019, order dated 24.09.2021***, the appeal of M/s Orient Craft Ltd. was accepted and the addition in the hands of M/s Orient Craft Ltd. stands deleted. He submitted that the coordinate Bench in the case of M/s Orient Craft Ltd., while dealing with grounds No.6 and 7 relating to alleged bogus expenses claimed with respect to M/s Sai Exports has given relevant findings in paras 26 and 27 holding that the expenditures made by M/s Orient Craft Ltd. were genuine. He submitted that in that eventuality, no additions in the hands of the assessee could be made. He relied on the order of the coordinate Benches in the cases of M/s Modernistic Attire (P) Ltd., ITAs No. 7668 & 7669/Del/2019; Shri Subhash Chander Gupta, ITAs No.7654, 7655 & 7656/Del/2019; Trendy Attire (P) Ltd., ITAs No.7659 & 7660/Del/2019; and Fashionable Attire (P) Ltd., ITAs No.7663 & 7664/Del/2019 to contend that in similar facts and circumstances relying on the deletion of additions in the hands of M/s Orient Craft Ltd., the additions made on protective basis in the entities similar to assessee were also deleted.

4. The ld. DR has opposed the same submitting that substantive additions stand deleted and the protective additions made in the hands of the assessee will prevail.

5. We have given thoughtful consideration to the issue involved and will prefer to rely on the order dated 30.06.2022 in ITA Nos.7659 & 7660/Del/2019 in the case of Trendy Attire (P) Ltd., wherein the coordinate Bench, on which one of us was in the quorum, dealt with the issue extensively on all aspects and deleted the protective additions. The relevant findings at paras 5 to 6.1 are reproduced below:-

*“5. On behalf of the assessee it was submitted by the Ld. AR, that in the case of M/s. Orient Craft Ltd., the substantive addition have been deleted therefore, the additions in the hands of appellant cannot survive. Ld. DR however, submitted that as Ld. CIT(A) had observed that the additions in the hands of assessee are being deleted on protective basis and will revive in case, substantive addition is deleted, therefore, assessee cannot take advantage of the ITAT order in favour of M/s. M/s. Orient Craft Ltd..*

*6. Appreciating the matter on record it can be observed that in ITAT order dated 24.09.2021 in ITA no. 3312/Del/2019 for assessment year 201516 and ITA No. 3311/Del./2019 for assessment year 2014-15 the substantive additions in the hands of M/s. Orient Craft Ltd. have been deleted. It can be observed that in para no. 49 in ITA No. 3311/Del/2019 and para no. 21 of ITA no. 3312/Del/2019 it has been held that M/s. Orient Craft Ltd. has proved that the material was purchased from vendors involved and payments have been made through banking channel. It was further held that the voluminous documentary evidences filed by M/s. Orient Craft Ltd. clearly established the genuineness of purchase of fabric from the present assessee / appellant.*

*6.1 That being so there is no force in the contention of the Ld. DR that if substantive additions are deleted then as per orders of ld. CIT(A) the protective assessment in the hands of present assessee / appellant will still revive. In fact the findings arrived by the Tribunal in case of M/s. Orient Craft Ltd. are to the effect that the purchases made from the present*

*assessee were genuine therefore, the Bench is of firm view that protective additions in the hands of the assessee/ appellant was never sustainable.”*

6. We are of the considered view that the facts are identical and there is nothing from the ld. DR to submit anything on law. Accordingly, following the coordinate Bench finding in the case of Trendy Attire (P) Ltd. (supra) as applicable to the assessee *qua* the alleged expenses on account of job work done by M/s Sai Exports proprietor Shri Mohinder Kumar Garg, the grounds No.3 and 4 in both the appeals stand allowed and the impugned additions in respective AY are deleted.

7. In the result, the appeals of the Assessee are allowed.

Order pronounced in the open court on 30.11.2023.

Sd/-

(NARENDER KUMAR BILLAIYA)  
ACCOUNTANT MEMBER

Sd/-

(ANUBHAV SHARMA)  
JUDICIAL MEMBER

Dated: 30<sup>th</sup> November, 2023.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi