

IN THE INCOME TAX APPELLATE TRIBUNAL

"D" BENCH, MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.486/Mum./2020

(Assessment Year : 1999-2000)

ITA no.487/Mum./2020

(Assessment Year : 2000-2001)

Quality Apparel Exporters Pvt. Ltd.
Unit no.4, Wisel Seepz, MIDC, Marol
Andheri (East), Mumbai 400 093
PAN – AAACQ1711F

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-11(1)(1), Mumbai

..... Respondent

Assessee by : Shri Pranit Tanna
Revenue by : Shri P.D. Chougule

Date of Hearing – 29/12/2023

Date of Order – 21/03/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeals have been filed by the assessee challenging the separate impugned orders of even dated 19/11/2019 passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals)-18, Mumbai, [*learned CIT(A)*], for the assessment years 1999-2000 and 2000-01.

2. Since both appeals pertain to the same assessee and involve similar issue that arises out of a similar factual matrix, therefore, these appeals were heard together and are being decided by way of this consolidated order. With

the consent of the parties, the appeal for the assessment year 1999-2000 is taken up as a lead case and the decision rendered therein shall apply *mutatis mutandis* to the other appeal of the assessee before us.

ITA No. 486/Mum./2020
Assessee's appeal – A.Y. – 1999–2000

3. In this appeal, the assessee has raised the following grounds:-

"The following grounds of appeal are independent of, and without prejudice to, one another:

1. The Commissioner of Income-tax (Appeals) - 18, Mumbai (hereinafter referred to as the CIT(A)) erred in upholding the action of the Assistant Commissioner of Income- tax-11(1)(1), Mumbai (hereinafter referred to as the Assessing Officer) in issuing notice under section 148 of the Act.

The appellants contend that on the facts and in the circumstances of the case and in law, the jurisdictional conditions are not satisfied and hence, the notice issued under section 148 is bad in law and consequently, the assessment order needs to be quashed.

2. The CIT(A) erred in upholding the action of the Assessing Officer in framing an ex parte order under section 144 of the Act.

The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of Assessing Officer in framing the assessment order ex parte.

3. The CIT(A) erred in upholding the action of the Assessing Officer in making an addition of Rs 5,48,35,315, being alleged net profit of the appellants per profit and loss account found in the business premises of the appellants during the survey proceedings under section 133A of the Act.

The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of the Assessing Officer in making the impugned addition inasmuch as the CIT(A), before confirming the said addition, has not appreciated the facts in its entirety and hence, the impugned addition of Rs 5,48,35,315 needs to be deleted.

4. The CIT(A) erred in upholding the action of the Assessing Officer in making an addition of Rs 1,28,21,454, being share application money received by the appellants, on the basis of Survey Report of DDIT (Inv) Wing.

The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of the Assessing Officer in making the impugned addition inasmuch as the CIT(A), before confirming the said addition, has not appreciated the facts in its entirety and hence, the impugned addition of Rs 1,28,21,454 needs to be deleted.

5. *The CIT(A) erred in upholding the action of the Assessing Officer in making an addition of Rs 10,87,178, being interest on TDRs, on the basis of a loose sheet found during survey proceedings under section 133A of the Act.*

The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of the Assessing Officer in making the impugned addition inasmuch as the CIT(A), before confirming the said addition, has not appreciated the facts in its entirety and hence, the impugned addition of Rs.10,87,178 needs to be deleted.

6. *The CIT(A) erred in upholding the action of the Assessing Officer in charging interest under sections 234B and 234C of the Act.*

The appellants, contend that the CIT(A) ought not to have upheld the action of the Assessing Officer in charging interest under sections 234B and 234C inasmuch as –

(a) the Assessing Officer has not given an opportunity to the appellants before charging the said interest as required by the principles of nature justice,

(b) the charging of interest is not in accordance with law.

The appellants crave leave to add to, alter or amend the aforestated grounds of appeal.”

4. The issue arising in ground no.1 pertains to the issuance of notice under section 148 of the Act. From the perusal of the record, we find that no notice under section 148 of the Act was ever issued to the assessee, and the original assessment proceedings were concluded vide order dated 19/03/2002 passed under section 144 read with section 143(3) of the Act. Further, the assessment order resulting in the present appeal was passed under section 144 read with section 254 of the Act. Therefore, we find ground no.1 raised by the assessee to be infructuous, and accordingly, the same is dismissed.

5. Ground no.2 raised in assessee's appeal is general in nature and therefore, needs no separate adjudication.

6. The issue arising in ground no.3, raised in assessee's appeal, pertains to the addition of Rs.5,48,35,315, being the alleged net profit of the assessee as

per the Profit and Loss account found during the survey proceedings from the business premises of the assessee.

7. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case pertaining to this issue are that for the year under consideration, the assessee filed its return of income on 31/12/1999 declaring a total loss of Rs.24,86,915. Subsequently, a survey under section 133A of the Act was carried out by DGIT (Investigation) Unit-II, Mumbai on 27/06/2000 at the business premises of the assessee. During the survey proceedings, duplicate Profit and Loss account and balance sheet pertaining to the year under consideration were found at the premises. From the perusal of the duplicate Profit and Loss account and balance sheet, it was observed that the net profit reflected for the year under consideration is Rs.5,48,35,315 as against the loss of Rs.24,86,918 as per the return of income filed by the assessee on 31/12/1999. Accordingly, the case of the assessee was selected for scrutiny, and statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. Since the assessee failed to respond to various notices issued during the assessment proceedings, the Assessing Officer ("AO") proceeded to estimate assessee's income on the basis of material available on record as per the provisions of section 144 of the Act. The AO vide first assessment order dated 19/03/2002 passed under section 144 read with section 143(3) of the Act held that the accounts for the year under consideration found during the survey are quite contrary to the final accounts filed along with the return of income. The AO further held that the printouts as well as backup on floppies obtained are

signed by the employees of the assessee. The AO also noted that the employee of the assessee as well as the son of one of the directors of the assessee admitted the facts in respect of the loose papers found in the business premises. Accordingly, the AO considered the net profit of Rs.5,48,35,315 as per the Profit and Loss account and balance sheet found during the survey under section 133A of the Act. In further appeal, the learned CIT(A) vide order dated 21/02/2003 allowed partial relief to the assessee of Rs.5,81,900. In an appeal before the Tribunal, the coordinate bench vide order dated 31/07/2006 restored the matter to the file of the learned CIT(A) to decide the appeal afresh.

8. Pursuant to the directions of the coordinate bench of the Tribunal, in the second round of proceedings, the learned CIT(A) vide order dated 29/02/2012 dismissed the appeal for non-attendance of the assessee. In further appeal before the Tribunal, the coordinate bench on assessee's plea that given an opportunity, the assessee would be able to compile all the details and produce before the AO, set aside the order passed by the learned CIT(A), and restore the matter to the file of AO for *de novo* adjudication after providing the opportunity to the assessee.

9. In the third round of proceedings, which resulted in the present appeal, pursuant to the directions of the coordinate bench of the Tribunal, notice under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee to grant opportunity of hearing. During the assessment proceedings, the assessee requested the AO to provide copies of all relevant documents necessary to present the case, which were duly provided vide order

sheet dated 25/03/2015. As noted by the AO in paragraph 3 of its order dated 21/03/2015 passed under section 144 read with section 254 of the Act, even after aforesaid details were provided, the assessee did not file any details/submissions. Accordingly, the AO proceeded to pass the order on the basis of material and information available on record and considered the net profit of Rs.5,48,35,315 as per the Profit and Loss account and balance sheet found during the survey proceedings.

10. In its appeal before the learned CIT(A), the assessee submitted that it had never maintained parallel books of accounts, and the loose papers found during the survey showing manipulative figures/imaginary figures are for the purpose of applying the American Express card. It was further submitted that the loose papers found during the survey proceedings were not authorised by any director or Chartered Accountant and were only signed by an employee of the company. The assessee submitted that the Profit and Loss figures found in the form of loose papers were not genuine and have no evidentiary value, therefore cannot be treated as per books of accounts. After considering the remand report filed by the AO and assessee's response thereto, the learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue and held that during the survey proceedings, documentary evidence has been detected in the shape of accounts in floppy, the statement of Data Entry Operator and the details noted in the loose papers which proves that the assessee has not declared the true and correct income to the Department. The learned CIT(A) further held that the accounts found from the assessee's office premises during the survey have been systematically maintained and are

sufficient to prove that assessee's income is much more than the income declared to the Department.

11. During the hearing before us, the learned Authorised Representative ("*learned AR*") reiterated the submissions as were made before the learned CIT(A). The learned AR also referred to various letters filed by the assessee before the AO, forming part of the paper book from pages 17-21, requesting copies of statements recorded during the survey as well as copies of various documents found during the survey. On the other hand, the learned Departmental Representative ("*learned DR*") vehemently relied upon the orders passed by the lower authorities and submitted that no explanation has been offered by the assessee with regard to two sets of accounts.

12. From the perusal of the record, it is evident that during the survey proceedings at the office premises of the assessee under section 133A of the Act, certain loose papers and data in the computer were found. As per these documents, the AO noticed sales of Rs.25,78,58,793 and the closing stock of Rs.1,48,78,253. Further, it was noted that certain indirect expenses of Rs.1,69,63,457 and direct expenses of Rs.22,68,19,312 are claimed. It was also noticed that the receipt of duty drawback of Rs.2,57,86,880 is also mentioned in these documents. Accordingly, as per the aforesaid documents found during the survey proceedings, the net profit of the assessee was computed at Rs.5,48,36,315 by the AO. It is evident from the record that apart from placing reliance on these documents showing the Profit and Loss account, no other document is relied upon by the lower authorities to compute the net profit of the assessee at Rs.5,48,36,315. As per the assessee, these

documents are dumb documents as the Profit and Loss account and balance sheet found during the survey are not signed by any director or Chartered Accountant. As per the assessee, it has not received any duty drawback and therefore the amount mentioned as a duty drawback in the documents found during the survey has no value.

13. We agree with the submissions of the assessee to the extent that while the existence of loose papers might raise questions, however, it does not necessarily imply guilt or malpractice, and for some concrete evidence is required to establish the wrongdoing. It is trite law that entries found in loose documents cannot be treated as correct and authentic unless they are supported by independent evidence. We find from the record that apart from the survey by the Income Tax Department, the assessee was also subjected to proceedings by the Customs Department and Anti-Corruption Branch of the CBI. However, from the perusal of the assessment order passed in the first round of proceedings as well as in the third round of proceedings, we find that the AO has not even supported its findings with any independent evidence found during the other proceedings and merely placed reliance upon the entries in the loose documents. At the same time, it is pertinent to note that the assessee though has claimed that books of accounts filed with its return of income are only genuine, however, did not bring any cogent material on record to justify the preparation of parallel Profit and Loss account found during the survey proceedings. Thus, in the peculiar facts of the present case, we are of the considered view that both parties have failed to support their contentions with complete information/documents and cogent material. Therefore, in view

of the facts and circumstances as noted above, we have no choice but to restore this issue to the file of the AO for *de novo* adjudication. Needless to mention no order shall be passed without affording reasonable opportunity of being heard to the assessee. Further, the AO is also directed to provide the opportunity to the assessee to respond to any material sought to be relied against the assessee in compliance with the principles of natural justice. Accordingly, the impugned order in respect of this issue is set aside and ground no.3 raised in assessee's appeal is allowed for statistical purposes.

14. The issue arising in ground no.4, raised in assessee's appeal, pertains to the addition on account of share application money received by the assessee.

15. We have considered the submissions of both sides and perused the material available on record. During the assessment proceedings, it was observed that the assessee has received share application money of Rs.1,28,21,454. Since the assessee failed to explain the source of the receipt, the AO made the addition of the entire sum of Rs.1,28,21,454 received by the assessee. During the appellate proceedings before the learned CIT(A), the assessee submitted that the share application money amounting to Rs.1,28,21,454 is received from Quality Exporters (one of the sister concerns) and the same has been reported by the auditor in Schedule 'A'. Therefore, it was claimed that the source is thus identified. The learned CIT(A), vide impugned order, upheld the addition made by the AO as no documentary evidence was furnished by the assessee that could prove the source of said share application money.

16. It cannot be disputed that under section 68 of the Act, if any sum is found credited in the books of the assessee, the assessee is required to explain the nature and source of such deposit to the satisfaction of the AO, otherwise, the sum so credited shall be charged to tax as the income of the assessee. It is further well-settled that in order to explain the nature and source of such a deposit, the assessee is required to establish the identity and creditworthiness of the creditor as well as the genuineness of the transaction. As per the assessee, the impugned share application money has been received from the sister concern. However, from the perusal of the record, it is evident that the assessee failed to furnish any documentary evidence to prove the nature and source of such share application money. In view of the facts and circumstances as noted above, we deem it appropriate to grant one more opportunity to the assessee to furnish necessary documentary evidence to satisfy the conditions as laid down in section 68 of the Act. Accordingly, the impugned order in respect of this issue is set aside and ground no.4 raised in assessee's appeal is allowed for statistical purposes.

17. The issue arising in ground no.5, raised in assessee's appeal, pertains to the addition on account of interest on TDRs.

18. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case are that on the basis of the documents found during the survey proceedings, the AO made an addition of Rs.10,87,178 as interest on TDRs in the hands of the assessee treating the same as income from undisclosed sources. In the third round of proceedings, resulting in the present appeal, the AO in the absence of new facts and

evidence brought on record by the assessee did not interfere with the findings of the AO vide order dated 19/03/2002 passed under section 144 read with section 143(3) of the Act. In the appellate proceedings before the learned CIT(A), the assessee submitted that the TDR are not in the name of the assessee but were found at the premises of the assessee. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue and held that in the absence of any explanation from the assessee, the interest earned on TDR is the income of the assessee.

19. Reiterating the submissions made before the learned CIT(A), the learned AR submitted that the TDRs are not in the name of the assessee but the same were found in the premises of the assessee. It was further submitted that the TDR belongs to Mr. Ram Sinha and the same has been confirmed by the bank. It was further submitted that the learned CIT(A) vide its order dated 12/08/2003 passed in assessee's own case for the assessment year 1998-99 has deleted the addition made against such TDR. In support of its submissions, the assessee has furnished the bank confirmation of the beneficiary of the TDR, forming part of the paper book from pages 67-73. From the perusal of the record, it is evident that these documents were not considered by any of the lower authorities, therefore we deem it appropriate to restore this issue to the file of the AO for *de novo* adjudication after considering the documents furnished by the assessee in support of its plea that the TDR is not in its name. Accordingly, the impugned order in respect of this issue is set aside and ground no.5 raised in assessee's appeal is allowed for statistical purposes.

20. The issue arising in ground no.6 pertains to the levy of interest under section 234B and section 234C of the Act, which is consequential in nature. Therefore, the same needs no separate adjudication.

21. In the result, the appeal by the assessee is partly allowed for statistical purposes.

ITA No. 487/Mum./2020
Assessee's appeal – A.Y. –2000-01

22. In this appeal, the assessee has raised the following grounds:-

"The following grounds of appeal are independent of, and without prejudice to, one another:

1. The Commissioner of Income-tax (Appeals) - 18, Mumbai (hereinafter referred to as the CIT(A)) erred in upholding the action of the Assistant Commissioner of Income- tax 11(1)(1), Mumbai (hereinafter referred to as the Assessing Officer) Officer in framing an ex parte order under section 144 of the Act.

The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of Assessing Officer in framing the assessment order ex parte.

2. The CIT(A) erred in upholding the action of the Assessing Officer in making an addition of Rs 2,41,49,790, being alleged net profit of the appellants per profit and loss account found in the business premises of the appellants during the survey proceedings ader section 133A of the Act.

The appellants contend that on the facts and in the circumstances of the case and in law, ine CIT(A) ought not to have upheld the action of the Assessing Officer in making the impugned addition inasmuch as the CIT(A), before confirming the said addition, has not appreciated the facts in its entirety and hence, the impugned addition of Rs 2,41,49,790 needs to be deleted.

3. The CIT(A) erred in upholding the action of the Assessing Officer in making an disallowance of Rs 3.20,75,413, being direct and indirect expenditure claimed by the appellants.

The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of the Assessing Officer in making the impugned disallowance inasmuch as the CIT(A), before confirming the said addition, has not appreciated the facts in its entirety and hence, the impugned disallowance of Rs 320,75,413 needs to be deleted.

4. *The CIT(A) erred in upholding the action of the Assessing Officer in charging interest under sections 234B and 234C of the Act.*

The appellants, contend that the CIT(A) ought not to have upheld the action of the Assessing Officer in charging interest under sections 234B and 234C inasmuch as -

(a) the Assessing Officer has not given an opportunity to the appellants before charging the said interest as required by the principles of nature justice,

(b) the charging of interest is not in accordance with law.

The appellants crave leave to add to, alter or amend the aforestated grounds of appeal."

23. Ground no.1 raised in assessee's appeal is general in nature and therefore, needs no separate adjudication.

24. The issue arising in ground no.2, raised in assessee's appeal, pertains to the addition of Rs.2,41,49,790, being the alleged net profit of the assessee as per the Profit and Loss account found during the survey proceedings from the business premises of the assessee. Since a similar issue has already been decided in assessee's appeal for the assessment year 1999-2000, therefore the findings/conclusions rendered therein shall apply *mutatis mutandis*. Accordingly, this issue is restored to the file of the AO for *de novo* adjudication with similar directions as rendered in the earlier year. As a result, ground no.2 raised in assessee's appeal is allowed for statistical purposes.

25. In ground no.3 the assessee has challenged the disallowance of direct and indirect expenditure. As the issue of computation of net profit is restored to the file of the AO for *de novo* adjudication, we deem it appropriate to also restore this issue to the file of the AO for consideration afresh. Accordingly, ground no.3 raised in assessee's appeal is allowed for statistical purposes.

26. The issue arising in ground no.4 pertains to the levy of interest under section 234B and section 234C of the Act, which is consequential in nature. Therefore, the same needs no separate adjudication.

27. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 21/03/2024

Sd/-
B.R. BASKARAN
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 21/03/2024

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai