

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No. 1967/Del/2022
(Assessment Year: 2012-13)**

Mohinder Kumar Jain, Vs. DCIT, B-2, Pushpanjali Circle-28(1), Farms Bijwasan New Delhi Road, Kapashera, New Delhi (Appellant)	(Respondent)
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PAN:AAGPJ1935P

Assessee by :	Shri Ved Jain, Adv
Revenue by:	Shri Rajesh Kumar, Sr. DR

Date of Hearing	19/12/2023
Date of pronouncement	13/03/2024

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.1967/Del/2022 for AY 2012-13, arises out of the order of the Commissioner of Income Tax (Appeals)-31, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 10/17-18 dated 10.06.2022 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 13.08.2014 by the Assessing Officer, ACIT, Circle-27(1), New Delhi (hereinafter referred to as 'Id. AO').
2. Though the assessee has raised several grounds, the only effective issue to be decided in this appeal is as to whether the Id CIT(A) was justified in confirming the addition of Rs. 74,16,930/- on account of alleged excess closing stock in the facts and circumstances of the instant case.
3. We have heard the rival submissions and perused the material available on record. The assessee is a proprietor of M/s. Chelsea Mills engaged in the business of manufacturing and export of readymade garments for ladies and kids wear. The

return of income for AY 2012-13 was filed by the assessee on 27.09.2012 declaring taxable income of Rs. 1,32,35,806/- which includes agricultural income of Rs. 48,55,246/-. A survey operation u/s 133A of the Act was carried out in the premises of the assessee on 05.05.2011. During the course of survey, the survey team found excess stock to the tune of Rs. 1,07,40,281/- after comparing with the closing stock as per provisional trading account with the physical stock found thereon. A statement on oath was taken from the assessee on the date of survey, wherein, the assessee stated that he is not able to reconcile the excess stock and accordingly came forward to offer the sum of Rs. 1,07,40,281/- as additional income for AY 2012-13 in addition to the regular income and undertook to pay the tax due thereon. But the Id AO observed that this commitment was not honoured by the assessee while filing the return of income. Accordingly, a show cause notice was issued during the course of assessment proceedings by the Id AO as to why the excess stock found during the survey of Rs. 1,07,40,281/- be not added to income in the assessment. In response to show cause notice, the assessee replied as under:-

"It is true survey u/s 133A was conducted and certain amount of stock was found to be excess as per the provisional balance sheets prepared on the date of survey. A provisional Balance sheet and Trading and Profit & loss account was prepared for the year ending on 31.03.2011. The opening stock was picked up from the above said provisional balance sheet and by applying the G.P. Ratio closing stock was determined as on 05.05.2011. As per the provisional trading accounts the stock in hand was found to be excess by Rs. 1,07,40,281/- to which the assessee replied that he is not in a position to explain the difference right now and to buy peace of mind he offered the difference to be part of current income. The books of accounts were audited by reputed firm of Chartered Accountants and the Net Profits for the entire previous year for 01.04.2011 to 31.03.2012 was found to be Rs. 78,40,617/- as declared in the return of income for A.Y. 2012-13 and paid the taxes in advance on due dates. The gross profit ratio is also maintained as compared to previous years. May be there were some expenses which could not be booked on the spot on 05.05.2011 because as per the custom in garment trade the materials and services are received on challans and the bills are received quite late ranging from 1 month to 3 months. As such there is no concealment. in view of the above and in view of the fact that the accounts are duly audited and also in view of the fact that the assessee has always cooperated with the department in the past and endeavour to do the same in future, kindly accept the explanation offered as above and oblige."

4. The Id AO however, did not heed to the contentions of the assessee. The Id AO observed that the assessee was duly confronted with the excess stock found during the course of survey amounting to Rs. 1,07,40,281/- and the same was arrived with the help of staff of the assessee. The assessee also had agreed for such excess stock during the survey but had later not honoured his commitment and accordingly added the same as income of the assessee.

5. The main plea of the assessee was that stock was received physically by assessee but invoices for the same were received late. In between survey action took place in the premises of the assessee. Hence, these invoices were accounted by the assessee post the date of survey. The excess stock found during the survey was based on provisional trading account, which was not updated. The invoices for purchase of raw material, accessories and other manufacturing expenses amounting to Rs. 1,08,53,870/- for the period from 01.04.2011 to 05.05.2011 were received subsequent to the date of survey and the same were duly accounted by the assessee in its books of account post the survey. These books of accounts were duly audited by the statutory auditor and tax auditor and return of income was filed by the assessee. Hence, it was submitted that there was no need to offer any additional income towards excess stock as there was no excess stock at all according to the assessee. Further, it was also pointed out by the assessee that gross profit (GP) of the assessee for AY 2012-13 was @26.97% which has increased when compared to GP for AY 2011-12 @23.81%.

6. The assessee filed certain additional evidences before the Id CIT(A) giving the recasted trading and profit and loss account up to 05.05.2011 and also a reconciliation in tabular form with regard to each item of expenses which had undergone change in the recasted financial statements vis-a-vis the provisional financial statements found at the time of survey. The assessee also furnished the entire bills, invoices and other documentary evidences in support of its claim in the form an additional evidences. The Id CIT(A) accordingly sought a remand report from the Id AO. The Id AO in the remand proceedings examined 16 suppliers that were listed in pages 8 and 9 of the order of the Id CIT(A) and found that 12 out of

16 parties had duly responded directly before the Id AO by filing the requisite details in response to notice issued u/s 133(6) of the Act and also confirmed the transactions carried out with the assessee. The Id AO accordingly concluded that purchase made from these 12 parties are to be accepted as genuine and further stated in the remand report submitted to the Id CIT(A) to treat the purchases made from following four parties as ingenuine:-

- A. Freudenberg & Vilene International Ltd- Import, Hong Kong
 - b. Pryam Fashion Asia Pacific and Co- Import- Hong Kong
 - c. Nandan Exim Ltd, Ahmedabad
 - d. V. S. Packaging, Delhi
7. The assessee with regard to aforesaid suppliers stated before the Id CIT(A) as under:-

"With respect to imports made from party no (1) and (2) above, complete evidences of imports are placed on record at page no-3 & 6 of our submission before your goodself dated 20.09.2021. Regarding party no-3 namely Nandan Exim Limited, Ahmedabad, complete evidences of purchases and payments made are placed on record, at page no -6 47 of our submission dated 20.09.2021 It is pertinent to reiterated that there was fire in the factory premises of Nandan Exim Limited, Ahmedabad and the factory remained closed for substantial and long time and the supplier has replied the notice u/s 133(6) by post on 12.03 2020, whereas the Assessing Officer hat already submitted the second remand report on 20.02.2020 After 31.03.2013 there is no dealings with Nandan Exim Limited, Ahmedabad, this can also be one of the reason for delay in reply. Lastly with respect to party no.-4 "VS Packaging", all evidences of purchases and payment have been placed vide our submission dated 20.09.2021 of page no.-6. It is pertinent to mention that post 2013-14 the VS Packaging stood closed and the notice was returned unserved After receiving copy of remand report dated 20.02.2020, the assessee called the partner of VS Packaging who has given all evidences including confirmation for closure, supplies and payments received)

8. The Id CIT(A) tabulated the difference in items between provisional financial statement found at the time of survey and recasted financial statements furnished for the period from 01.04.2011 to 05.05.2011 as additional evidences and observed as under:-

7.4 From the above chart, it is seen that the additional purchase expenses are claimed at Rs. 89,50,947/-, additional consumable stores is claimed at Rs. 2,91,479/-, additional manufacturing expenses are claimed at Rs. 4,20,804/- and additional other manufacturing expenses are claimed at Rs. 11,90,639/-. Thus, the claim of additional expenses for the period 01.04.2011 to 05.05.2011 aggregates to Rs. 1,08,53,870/-. The AO was asked to examine this claim of additional expenses, who vide final remand report dated 19.02.2020 reported that information/confirmation u/s 133(6) of the I.T. Act had been called for by him in 16 cases, out of which in 12 cases confirmation has been received and in the remaining 04 cases no confirmation/reply from the party was received. Accordingly, the AO has opined that the claim of expenses corresponding to 12 parties could be allowed and addition with respect to the balance 04 parties may be upheld in view of no response being received from such parties. The above 16 parties chosen by the AO for verification are related to the purchases of fabric and accessories by the appellant."

9. The Id CIT(A) gave relief only for purchase made from 14 parties to the tune of Rs. 14,20,429/- based on the remand report submitted by the Id AO. Further, the Id CIT(A) gave relief for additional manufacturing expenses including power and fuel, sampling, designing, fabrication, testing and quality control, packing material, consumables store and custom clearing and forwarding expenses to the tune of Rs. 19,02,922/-. Accordingly, he restricted the addition to Rs. 74,16,930/- as against Rs. 1,07,40,281/- made by the Id AO in the assessment.

10. We find that the Id AO had ultimately held in his remand report dated 19.02.2020 that addition is to be sustained only in respect of aforesaid 4 parties since they had not responded to notice u/s 133(6) of the Act. In this regard, it is pertinent to note that the assessee had made purchases from 63 suppliers and had given the entire list before the lower authorities. Out of those 63 suppliers, the Id AO in the remand proceedings chose 16 suppliers to carry out his examination on the veracity of transactions carried out with the assessee in the remand proceedings. Out of these 16 suppliers, 12 parties duly responded to notice u/s 133(6) of the Act by furnishing the requisite details directly before the Id AO. This does not mean remaining 47 suppliers were ingenuine. It was the choice exercised by the Id AO to carry out test check examination by selecting only 16 out of 63 suppliers list given by the assessee. Hence, in our considered opinion, absolutely no adverse opinion could be drawn on the remaining transactions carried out by the assessee with 47 suppliers and transactions of those 47

suppliers are to be accepted as genuine. The Id CIT(A) had erred in not granting relief to the assessee with respect to these 47 suppliers. Hence, we deem it fit and appropriate to direct the Id. AO to grant relief while giving effect to the order of this Tribunal in respect of these 47 suppliers.

11. With regard to 4 parties listed hereinabove, we find that the assessee had filed detailed party-wise rejoinder to the remand report before the Id CIT(A) as under:-

"1) Regarding M/s FREUDENBERG VILENE INTERNATIONAL LTD, Hong Kong, the company is having business at Hong Kong and the assessee has made import of accessories for US\$ 1100 for which the payment was released by our banker vide remittance vouchers dated 28/04/2011 proof of remittance is attached. The import has been made based on our purchase order dated 29/04/2011 Invoice No 1010051718 dated 29/04/2011 issued by M/s FREUDENBERG VILENE INTERNATIONAL LTD. Hong Kong, Airways Bill No 09070581070 dated 01.05.2011 issued by the Airlines, Custom Clearance through Bill of Entry no 3375260 dated 02/05/2011, clearing agency invoice no 255 dated 09/05/2011 and store entry dated 05/05/2011 by assessee. As proof of import following documents are attached for Import of accessory worth US\$ 1100 (equal to INR 48.934):-

- a) Purchase Order dated 29.04.2011*
- b) Invoice No 1010051718 dated 29.04.2011*
- c) Airways Bill No 09070581070 dated 01.05.2011*
- d) Bill Of Entry No 3375260 dated 02.05.2011*
- e) Clearing agency bill no 255 dated 09.05.2011*
- f) Store entry by assessee dated 05.05.2011*
- g) Booked in Purchase of Accessories and O&M dated 30.05.2011*
- h) Copy of ledger accounts of M/s FREUDENBERG VILENE INTERNATIONAL LTD, Hong Kong, in the books of Chelsea Mills for F.Y. 2011-12 is attached.*

11) Regarding M/s PRYAM FASHION ASIA PACIFICS & CO, it is submitted that the assessee made import of accessories for US\$ 4139.17 (equal to INR 1,85,042). The supplier changed their business premises in Hong Kong without notice to the postal authority, about the new address. Had the AO required us to find out the now address, we would have complied with the same and provided the new address after searching? The assessee had made import of accessories for US\$ 4139.17 for which the payment was released by our banker vide remittance vouchers dated 05/05/2011 as proof the Bank statement is attached. The import has been made based on our purchase order dated 02/04/2011. Invoice No 4165599 and 4165600 dated 08/04/2011, (issued by Mis PRYAM FASHION ASIA PACIFICS & CO Hong Kong) Airways Bill No217-36356832 dated 15/04/2011 by the Airlines, Custom Clearance through bill of entry no 3223537dated 15/04/2011, clearing agency invoice no 150 dated 22/04/2011 and store entry dated 05/05/2011 by the assessee. As per proof of import following documents are attached for import of accessories for US\$ 4139.17-

- a) Purchase Order dated 02.04.2011
- b) Invoice No 4165599 and 4165600 dated 08.04.2011
- c) Airways Bill No 21736356832 dated 15.04.2011
- d) Bill Of Entry No 3223537 dated 15.04.2011
- e) Clearing agency bill no 150 dated 22.04.2011
- f) Store entry by assessee dated 22.04.2011.
- g) Booking in Purchase of Accessories (O&M) dated 30.05.2011
- h) Copy of ledger accounts of M/s PRYAM FASHION ASIA PACIFICS & CO, Hong Kong in the books of Chelsea Mills, is also attached.

III) Regarding M/s V.S. Packaging from whom packing materials were purchased in the period 01.04.2011 to 05.05.2011. The notice u/s 133(6) date 25/07/2017 issued and by that date the supplier had closed the business and the notice u/s 133(6) was received back and undelivered from postal department. Now to prove the genuineness of the party and transaction we have obtained CONFIRMATION from M/s V.S. Packaging interalla giving the date of Invoices, the particular of materials supplied, confirmation for having received the payment and having confirmed about closure of business. The PAN NO of M/s V.S. Packaging, name of the Managing Partner and address of the managing partner are also given, along with confirmed copy of 3 invoices and confirmed copy of ledger account are also attached to the confirmation and are hereby submitted for your kind verification.

iv) Regarding M/s Nandan. Exim Limited, Ahmadabad, who received the notice u/s 133(6) dated 26.11.2018 but replied late on dated 12/03/2020, whereas the remand report by the assessing officer is dated 20.02.2020 the delay has happened due to the fact that the assessee has no dealings NAT DAN post 2012. The confirmation and reply dated 12.03.2020 to notice /s 133(6) is in the official record of assessing officer circle 32(1) having been received through postal department. It is a matter of fact and if needed the reply can be directed to be forwarded to your good self by the assessing officer. A copy of the reply u/s 133(6) dated 12/01/2020, received by us from the supplier, after our request to them, is attached and the facts are 100% corroborated and are in confirmation with the enquiry. That before 2012 we have old and long relation with M/s Nandan Exim Limited from whom we purchased denim (which is our main raw material) but after 2012 there are no dealings. This is why the reply to notice u/s 133(6) has been delayed. Our submission are verifiable from the copy of account of Nandan Exim Limited in the Books of Chelsea Mills for F.Y. 2011-12 attached

For making purchase of denim from "Nandan Exim Limited", Ahmedabad, the Assessee in first place supply purchase order, against which "Nandan Exim Limited". Ahmadabad raised invoice, handed over raw materials to the freight carrier, from freight carrier in Delhi the assessee received the game which is recorded in the store department and used for manufacturing. The payments we made to supplier "Nandan Exim Limited" in regular course and the 5 invoices in question dated 4/20211. for Rs 20,49,199/- Invoice dated 30/04/2011 Rs. 2,76,276/-, Invoice dated 30/04/2011 R65554 Invoice dated 30/04/2011 Rs. 1,83,374/- and invoice dated 02/05/2011 for Ra. 20.020- have been paid by Chelsea Mills through banking channels for which relevant bank statement from 01/04/2011 to 30.09.2011 is attached, along with Nandan Exim Limited payments duly car marked. A chart has been prepared for complete mechanism of purchase

of denim from suppliers M/s Nandan Exim Limited, which is very clear and self-explanatory and is reproduced as under-

Mechanism for Purchase of denim from Nandan Exim Limited received during 01.04.2011

Sl. No.	Invoice No	Value	Purchase Order Date	Date of Invoice	Transported from Ahmadabad	Arrival in Delhi	Receipt in Chelsea/Store	Date of Booking in Chelsea Mills
	1124910037	20,49,199	17/01/2011	06/04/2011	06/04/2011	20/04/2011	20/04/2011	05/06/2011
	1124910675	2,76,276	17/03/2011	30/04/2011	30/04/2011	03/05/2011	03/05/2011	03/06/2011
	1124910673	3,65,554	17/01/2011	30/04/2011	30/04/2011	05/05/2011	05/05/2011	05/06/2011
	1124910674	1,83,374	17/01/2011	30/04/2011	30/04/2011	05/05/2011	05/05/2011	05/06/2011
	1124910729	20,020	17/03/2011	02/05/2011	02/05/2011	05/05/2011	05/05/2011	05/06/2011
	TOTAL	28,94,423						

The reply dated 12/03/2020 send by M/s Nandan Denim Limited through post it is accompanied by the copies of all live invoices, proof of transactions and copy of account of M/s Chelsea Mills in the books of M/s Nandan Exim Limited for F.Y. 2011-12, explaining the fact of the case and reply to 133(6).

The name of M/s Nandan Exim Limited have been changed to M/s Nandan Limited, Limited."

12. In our considered opinion, the aforesaid explanation had not been properly examined by the lower authorities in respect of these 4 parties. Hence, we deem it fit and appropriate to restore this issue to the file of the Id AO with a direction to examine the veracity of purchase made from these 4 parties alone.

13. With these directions the grounds raised by the assessee are disposed of.

14. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 13/03/2024.

-Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 13/03/2024
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi