

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"F" BENCH, MUMBAI**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA no.1263/Mum./2024**

**(Assessment Year : 2011-12)**

**DCIT, Circle-7(1)(1)**

Room No. 126, 1<sup>st</sup> Floor,  
Aayakar Bhavan, M. K. Road,  
Mumbai-400020

..... Appellant

v/s

**Mirage Clothing Company  
Pvt Ltd**

403 Kewal Industrial Estate,  
Senapati Bapat Marg,  
Mumbai-400013  
PAN-AAACM5978N

..... Respondent

Assessee by : Shri Ramankumar Goyal

Revenue by : Shri Ankush Kapoor, CIT DR

Date of Hearing – 12/06/2024

Date of Order – 22/08/2024

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal has been filed by the Revenue challenging the impugned order dated 21/01/2024, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2011-12.

2. The brief facts of the case are that the assessee is incorporated under the Companies Act, 1956 and is engaged in the business of providing "marketing support services" to Indian ready-made clothing exporters and manufacturers. For the year under consideration, the assessee filed its return of income on 26/09/2011 declaring a total income of Rs.4,00,12,760. The return filed by 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. In response to the notices issued during the assessment proceedings, the assessee filed the necessary details. Vide order dated 27/01/2014 passed under section 143(3) of the Act, the Assessing Officer ("AO") assessed the total income of the assessee at Rs.6,29,88,800, after disallowing sampling/design expenses, foreign travel expenses, website designing expenses, and salary paid to directors and their relatives. During the appellate proceedings before the learned CIT(A), the assessee filed detailed submissions supported by documentary evidence. Accordingly, the learned CIT(A) sought comment/report on the submissions of the assessee from the AO. However, in the absence of any remand report from the AO, the learned CIT(A), vide impugned order deleted the additions made by the AO after considering the submissions and documentary evidence filed by the assessee. Being aggrieved, the Revenue is in appeal before us and has raised the following grounds: –

*"A. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in not insisting on the comments of the AO through remand report under Rule 46A of the I. T. Rules as there was new evidence produced during the appellate proceedings which was not furnished before the AO while passing the order u/s 143(3) of the I. T. Act, dated 27.01.2014.*

*B. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in relying on the submission made by the assessee during the appellate proceedings, whereas the AO had mentioned in the assessment order passed u/s 143(3) of the I. T. Act, dated 27.01.2014 that there was no compliance from the assessee on the appointed date i.e. 16.01.2024.*

*C. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by AO on account of Sampling/Designing expenses of Rs.89,98,290/-, without insisting on the comments of the AO through remand report.*

*D. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by the AO on account of Foreign Travel Expenses of Shri Rajkumar Lanka amounting to Rs.1,91,438/- without insisting on the comments of the AO through remand report.*

*E. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by AO on account of Website Designing Expenses of Rs.5,28,000/-, without insisting on the comments of the AO through remand report.*

*F. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by AO on account of Excess Salary paid to Director & their relatives of Rs.1,32,58,315/-, without insisting on the comments of the AO through remand report."*

3. In the present appeal, the primary grievance of the Revenue is that the learned CIT(A) did not insist on the comments of the AO through the remand report under Rule 46A of the Income Tax Rules, 1962 ("the Rules"), and allowed the appeal filed by the assessee by relying upon the submissions/evidence submitted by the assessee.

4. In this regard, we have considered the submissions of both sides and perused the material available on record. It is evident from the record that the AO disallowed the sampling/designing expenses and foreign travel expenses primarily on the basis that the assessee did not submit any explanation as to how the same were for the business of the assessee. Further, with respect to website design expenses, the AO raised the same objection and further held that the assessee did not submit any explanation as to why the expenditure

should not be treated as capital in nature. As regards the disallowance of salary paid to directors and their relatives, the AO was of the view that the assessee has not submitted any explanation or justification for the salary so paid. In the appellate proceedings before the learned CIT(A), the assessee filed a detailed written submission along with documentary evidence in respect of each of the aforesaid additions. It is discernible from the perusal of the impugned order that the learned CIT(A) requested the AO to offer his comments/report on the submissions of the assessee, in conformity with the provisions of Rule 46A of the Rules. However, the AO did not respond to such a request and did not file any remand report in response to the submissions filed by the assessee. Thus, it is evident from the record that a reasonable opportunity was allowed to the AO to respond to the written submissions of the assessee and since the AO chose not to file any remand report, the learned CIT(A) proceeded to adjudicate the appeal based on documents/evidence on record. From the plain reading of Rule 46A of the Rules, we find that there is no provision which requires the learned CIT(A) to insist on the comments of the AO. Therefore, we find no merits in the contention of the Revenue raised in grounds no. A and B of the present appeal, and accordingly the said grounds are dismissed.

5. The issue arising in ground no. C, raised in Revenue's appeal, pertains to the deletion of addition on account of sampling/design expenses.

6. We have considered the submissions of both sides and perused the material available on record. As per the assessee, it is engaged in the business of agency and ready-made garments and for the same, it procures/develops

designs and samples of ready-made garments and then displays them to foreign buyers. The foreign buyers in turn place orders to the assessee and such orders are placed onto the Indian clothing exporters and manufacturers with whom the assessee has a tie-up. Thereafter, the Indian manufacturers commenced production of garments based on orders procured by the assessee. As per the assessee, in the entire process, it oversees and monitors the quality of the exported goods and ensures the foreign customers regarding the quality level of the manufacturers. For the aforesaid scope of work, the assessee earns commission income from the Indian clothing exporters and manufacturers for passing on orders from foreign buyers, whereas the major cost incurred by the assessee is the cost of procuring/developing designs and samples. In the present case, it is evident from the record that there is no dispute regarding the aforesaid profile of the assessee.

7. During the year under consideration, the assessee debited an expenditure amounting to Rs.89,98,290 in the profit and loss account on account of sampling/design expenses. During the assessment proceedings, the assessee vide letter dated 29/11/2013 submitted details of sampling and design expenses. These expenses include expenses on account of Sample Ayushi, Sample Jhalak, Sample Megha Agarwal, and Sample Bikram Oberoi. As per the assessee, it has teams under which design and sampling were done, and therefore the invoices of expenses incurred by such teams were submitted. It is evident from the record that the assessee has furnished the ledger account of these parties. However, the AO on the basis that the

assessee did not explain how these expenses were for the purpose of the business disallowed the expenditure.

8. As per the assessee, during the collection of samples the sales team has to visit various places and fabric makers all over India and overseas, wherein out-of-pocket expenses are incurred by the sales team on behalf of the assessee, which are reimbursed based on actual proof furnished by the assessee. It is further the plea of the assessee that the sales team purchased samples directly and had also availed the service of local consultants for gathering information as to the latest trends and styles of the garment. According to the assessee, based on the market research and samples the assessee is able to procure huge orders overseas for its Indian customers on which it earned commission income amounting to Rs.14.58 crores as against the sampling/designing expenditure of Rs.89,98,290, during the year under consideration, which constitutes mere 6.17% of the business income. Thus, it is the submission of the assessee that these expenses were incurred for the purpose of the business of the assessee and form an integral part of its operations as a marketing support service provider. In support of its claim, the assessee has also furnished various evidence of sampling/designing expenditure, such as bank statements, payment vouchers, sample reimbursement statements, purchase bills of fabrics, etc., which forms part of the paper book from pages 32-426.

9. The Revenue apart from harping that opportunity was not granted to the AO to comment on the evidence produced by the assessee before the learned CIT(A), did not bring any material on record to controvert the detailed

submissions of the assessee supported by documentary evidence. Accordingly, we are of the view that considering the business model of the assessee the expenditure incurred on sampling/designing is pivotal for the conduct of its business efficiently and profitably, and therefore has rightly been allowed by the learned CIT(A). Accordingly, ground no. C raised in Revenue's appeal is dismissed.

10. The issue arising in ground no. D, raised in Revenue's appeal, pertains to the deletion of addition on account of foreign travel expenses.

11. We have considered the submissions of both sides and perused the material available on record. During the year under consideration, the assessee debited foreign travel expenses amounting to Rs.1,91,438 incurred by one of its employees, namely Mr. Lanka Rajkumar. In the absence of any explanation by the assessee regarding the business exigency of the expenditure, the AO disallowed the foreign travel expenses and added the same to the total income of the assessee.

12. As per the assessee, Mr. Lanka Rajkumar used to work with the company from October 1996 till August 2013 as a Senior Merchandiser and used to travel on behalf of the assessee to the UK for business trips. It is further the submission of the assessee that the said employee was assigned by the management of the company to do the business marketing and sales activities and overseas cities like Cardiff and Reading in UK to meet the management of the company's major clientele, namely Peacock. It was submitted that Mr. Lanka Rajkumar finalised the price of the products and

gathered further orders during the said meeting which helped the assessee in the further advancement of business with the said customer. As per the assessee, the entire expenditure incurred by the said employee on its boarding, lodging, and local travel was authorised by the management of the assessee company and was fully incurred for the advancement/expansion of the assessee's business. In support of the aforesaid claim, the assessee has placed on record documentary evidence containing ledger account, chart of expenses furnished by the employee, and invoices of boarding, lodging and currency purchase, which form part of the paper book from pages 427 – 445. No material has been brought on record by the Revenue to doubt the genuineness of the claim of the assessee that the said expenditure was incurred for the purpose of the business. Accordingly, we find no infirmity in the impugned order in allowing the foreign travel expenses amounting to Rs.1,91,438 incurred by the assessee. As a result, ground no. D raised in Revenue's appeal is dismissed.

13. The issue arising in ground no. E, raised in Revenue's appeal, pertains to the deletion of addition on account of website design expenses.

14. We have considered the submissions of both sides and perused the material available on record. During the year under consideration, the assessee debited Rs.5,28,000 towards website designing expenses and claimed the same to be revenue expenditure. During the assessment proceedings, the assessee was asked to explain why the said expenditure be not treated as capital in nature. However, the assessee did not submit any explanation thereto. The AO further held that the assessee also did not

produce any evidence to establish that the expenses so debited were genuine expenses and incurred for the purpose of business. Accordingly, the AO disallowed the website designing expenses and added the same to the total income of the assessee.

15. As per the assessee it has built a website functioning with the web address, [www.miragefg.com](http://www.miragefg.com). It is the claim of the assessee that the website requires continuous development and upgradation of pages and product catalogue, therefore it has engaged an independent web developer and IT consultant to upkeep and maintain the website. As per the assessee, the nature of expenses in developing the website includes annual fees for a domain name, annual fees for web hosting, monthly fees for web email access to various employees and key persons, content marketing and SEO optimisation, and e-commerce integration or API integrations. Thus, as per the assessee, it has fully outsourced the entire functioning of running and maintaining the said website to an independent consultant. In support of its claim of the expenditure, the assessee has placed on record the invoice issued in respect of charges for designing content material for the official website of the assessee, forming part of the paper book on page 446.

16. It cannot be disputed that in today's corporate world having a website and digital presence has become essential for increasing the digital footprint of the company. Considering the business profile of the assessee, wherein it acts as an intermediary between foreign customers and Indian manufacturers, having a fully functional and updated website is a necessity not only for having a digital presence but also for the efficient working of its business. Thus, we

are of the considered view that any expenditure for keeping the website operational and updated with the latest product catalogues cannot be said to be providing enduring benefit to the assessee, and therefore, is not capital in nature. Apart from merely doubting the genuineness of the expenditure, the Revenue did not examine the fact that the website is still functional and provides information regarding various brands, partners, etc. with whom the assessee is having business transactions. Accordingly, we find no infirmity in the impugned order in allowing the website designing expenses amounting to Rs.5,28,000 incurred by the assessee. As a result, ground no. E raised in Revenue's appeal is dismissed.

17. The issue arising in ground no. F, raised in Revenue's appeal, pertains to the deletion of addition on account of excess salary paid to directors and their relatives.

18. We have considered the submissions of both sides and perused the material available on record. During the year under consideration, the assessee paid remuneration/salaries to the following directors/employees: -

<i>Name of the person</i>	<i>Position</i>	<i>Remuneration (in Rs.)</i>
<i>Ms. Manjul Uberoi</i>	<i>Managing Director</i>	<i>1,20,00,000</i>
<i>Mr. Bikram Uberoi</i>	<i>Chief sales and Marketing Officer</i>	<i>53,62,500</i>
<i>Ms. Kiran Sharan</i>	<i>Executive Director</i>	<i>3,72,000</i>
<i>Mr. Nishikant Sharan</i>	<i>Vice President</i>	<i>64,62,315</i>
<i>Mr. Vivek Chopra</i>	<i>Buying controller</i>	<i>15,40,000</i>

19. The AO compared the salary of Ms. Manjul Uberoi with the salary of Ms. Kiran Sharan and held that Ms. Kiran Sharan is also the founder and director of the assessee to whom salary of Rs.3,72,000 is paid whereas the salary of

Rs.1.20 crore is paid to Ms. Manjul Uberoi who also happens to be the founder and is a Managing Director of the company. The AO rejected the contention of the assessee that Ms. Manjul Uberoi is actively handling the overall affairs of the company and therefore was paid a higher salary as compared to Ms. Kiran Sharan. Accordingly, the AO considered the salary of Rs.5 lakh per month to be justified and disallowed the balance amount of Rs.60 lakh paid to Ms. Manjul Uberoi. Similarly, the AO compared the salary of Mr. Nishikant Sharan with the salary of Ms. Kiran Sharan and held that there is no justification for payment of your salary to Mr. Nishikant Sharan. Accordingly, the AO disallowed the salary in excess of Rs.3,72,000 paid to Mr. Nishikant Sharan. As regards the salary paid to Mr. Vivek Chopra, the AO held that the assessee has not submitted any explanation and justification of the salary paid, and therefore restricted the payment to Rs.3,72,000 and disallowed the balance amount of Rs.11,68,000.

20. As per the assessee, Ms. Manjul Uberoi is one of the promoters and founding directors of the assessee company, who envisioned the entire business framework and roadmap of the assessee company. Further, Ms. Manjul Uberoi has been wholeheartedly running the entire functioning and business of the assessee since its inception. The assessee submitted that Ms. Manjul Uberoi has over 25 years of experience in the garment business and worked in buying agencies and export houses for large corporate houses. In his submission before the learned CIT(A), the assessee provided a detailed profile of Ms. Manjul Uberoi along with her major achievements. Accordingly, the assessee claimed that the work and responsibility of Ms. Manjul Uberoi

cannot be compared with Ms. Kiran Sharan, despite the fact that Ms. Kiran Sharan is also one of the founders and directors of the company.

21. As regards Mr. Nishikant Sharan, the assessee submitted that he is handling the overall day-to-day operation of the company and has 10 years of experience as a Manager Human Resource Management with the Tata Group of companies. Further, it is the submission of the assessee that since the year of joining, i.e. 1992, Mr. Nishikant Sharan has been handling various key roles in the assessee company. Accordingly, the assessee justified the payment of a salary of Rs. 64,62,315 to Mr. Nishikant Sharan.

22. As regards Mr. Vivek Chopra, the assessee submitted that he bought technical expertise in managing logistics and marketing. Therefore, he is managing samples and designs from all over the world and has been vested with the job of efficiently handling the logistics, and supply chain of the samples to and from customers/suppliers. The assessee furnished a detailed resume of Mr. Vivek Chopra before the learned CIT(A), as reproduced from pages 24-28 of the impugned order.

23. Accordingly, the assessee submitted that the salary paid to the directors is commensurate with their services. It is evident from the record that the AO has merely compared the salary of the directors, without examining the services rendered by them to the assessee company. Therefore, considering the experience and magnitude of operations handled by the aforementioned directors, we are of the considered view that the learned CIT(A) has rightly

deleted the disallowance of salary made by the AO. As a result, ground no. F raised in Revenue's appeal is dismissed.

24. In the result, the appeal by the Revenue is dismissed.

Order pronounced in the open Court on 22/08/2024

**Sd/-**  
**B.R. BASKARAN**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 22/08/2024**

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.*

By Order

Assistant Registrar  
ITAT, Mumbai