

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'B' CHANDIGARH**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 425,426/CHD/2021

निर्धारण वर्ष / A.Y.: 2009-10, 2010-11

M/s Oswal Fab Knits Ltd., Office No.23, # B 20-350, New Shopping Center, Ghuman Mandi, Ludhiana.	Vs	The DCIT, Central Cuircle-1, Ludhiana.
स्थायीलेखासं./PAN NO: AAAC09876B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No. 427,428/CHD/2021

निर्धारण वर्ष / A.Y.: 2009-10, 2010-11

M/s Oswal Trends P.Ltd., Office No.23, # B 20-350, New Shopping Center, Ghuman Mandi, Ludhiana.	Vs	The DCIT, Central Cuircle-1, Ludhiana.
स्थायीलेखासं./PAN NO: AABCO0431D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No. 430,431/CHD/2021

निर्धारण वर्ष / A.Y.: 2009-10, 2010-11

M/s Oswal Apparels P.Ltd., Office No.23, # B 20-350, New Shopping Center, Ghuman Mandi, Ludhiana.	Vs	The DCIT, Central Cuircle-1, Ludhiana.
स्थायीलेखासं./PAN NO: AAACO9177H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No. 25/CHD/2022

निर्धारण वर्ष / A.Y.: 2010-11

The ACIT, Central Cuircle-1, Ludhiana.	Vs	M/s Oswal Apparels P.Ltd., Office No.23, # B 20-350, New Shopping Center, Ghuman Mandi, Ludhiana.
स्थायी लेखा सं./PAN NO: AAACO9177H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by: Shri Gaurav Sharma, CA
राजस्व की ओर से/ Revenue by : Shri K.Mehboob Ali Khan,CIT DR

सुनवाई की तारीख/Date of Hearing : 21.08.2024
उदघोषणा की तारीख/Date of Pronouncement : 04.11.2024

PHYSICAL HEARING

आदेश/Order

Per Sanjay Garg, Judicial Member:

The captioned appeals are outcome of the same search action carried out at the Oswal Group of cases on 10.05.2012. Since common facts and issues are involved in these appeals, therefore, same were heard together and are being disposed of by this common order.

2. The common issue involved in all the appeals is relating to the addition made by the AO under Section 68 of the Income Tax Act, 1961 treating the share application money received by the assessee as unaccounted income of the assessee.

3. At the outset, the ld. Counsel for the assessee has brought our attention to the relevant Paper Book pertaining to ITA No. 427/CHD/2021 for assessment year 2009-10 in the

case of Oswal Trends P.Ltd. At page 11 of the said Paper Book, there is a copy of the acknowledgement of filing of the return of income. A perusal of the said acknowledgement reveals that the return of income for the said assessment year 2009-10 was filed by the assessee on 01.09.2009.

3.1 Similarly, the ld. counsel has further invited our attention to the copy of acknowledgement for assessment year 2009-10 in the case of Oswal Apparels (ITA No. 430/CHD/2021) and the return for the said assessment year was filed on 31.08.2009.

3.2. Similarly, in the case of Oswal Fab Knits Ltd. (ITA No. 25/CHD/2021), the return for assessment year 2009-10 was filed on 26.10.2009.

3.3. In all the aforesaid cases, the limitation to issue notice under Section 143(2) of the Income Tax Act as per the relevant provisions was six months from the end of the Financial Year in which the return of income was filed, which comes to 30.09.2010.

4. The ld. Counsel for the assessee has further invited our attention to the relevant acknowledgement of return in the case of the assesseees for assessment year 2010-11. The

return of income in the case of Oswal Trends (ITA 428/CHD/2021) was filed on 21.09.2010.

4.1. The return in the case of Oswal Apparels (ITA 431/CHD/2021) was filed on 05.10.2010 and in ITA 426/CHD/2021 in the case of Oswal Fab Knits was filed on 21.09.2010.

4.2. The last date to issue notice under Section 143(2) in relation to the aforesaid cases was 30.09.2011.

5. Admittedly, search action was carried out in the case of the assessee on 10.05.2012. On the said date of search, the assessment in all the captioned cases was non abated/completed.

6. A perusal of the assessment order in all these cases would reveal that a common assessment order has been passed by the AO in all these cases. Only the quantum of additions differ for each assessee and assessment year. The additions, as observed above, have been made treating the share application money received by the assessee as unaccounted income of the assessee. These additions have been made by the AO by way of re-appreciating the information and evidences on record. No incriminating

material, whatsoever, was found during the course of search action. The issue is squarely covered by the recent decision of the Hon'ble Supreme Court in the case of PCIT Vs Abhisar Buildwell (P) Ltd. (2023) 149 taxmann.com 399, wherein it has been held by the Hon'ble Supreme Court that no addition can be made in the absence of any incriminating material found during the course of the search action in the case of non abated/completed assessment on the date of search. In view of the said law laid down by the Hon'ble Supreme Court, the impugned additions are not sustainable in these cases.

7. ITA No.25/CHD/2022 is the appeal filed by the Revenue. The AO had deleted the addition of Rs.2,39,40,000/- on account of share application money received by the assessee. It is pertinent to mention here that out of the total addition made by the AO of Rs.5,59,40,000/-, the ld. CIT(A) had sustained the addition to the extent of Rs.3,20,00,000/- and deleted the remaining addition of Rs.2,39,40,000/-. The assessee had filed the appeal against the order of the ld. CIT(A) against the sustenance of the addition whereas the Revenue had come in appeal against the action of the ld. CIT(A) in deleting the addition.

8. In view of our observations above, since no incriminating material was found during the course of search action and the assessment in all these cases stood completed/ non-abated on the date of search action, therefore, the impugned additions made by the AO are not sustainable in view of the law laid down by the Hon'ble Supreme Court in case of PCIT Vs Abhisar Buildwell P.Ltd. (supra).

9. In view of this, the appeals of the assessee stand allowed and the appeal of the Revenue stand dismissed.

Order pronounced on 04.11.2024.

Sd/-

**(KRINWANT SAHAY)
ACCOUNTANT MEMBER**

Sd/-

**(SANJAY GARG)
JUDICIAL MEMBER**

"Poonam"

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)+
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File