

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'B' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Accountant Member
and Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A. No. 1307/KOL/ 2013
Assessment Year: 2007-2008**

Income Tax Officer,.....Appellant
Ward-46(1), Kolkata,
3, Government Place (West),
Kolkata-700 001

-Vs.-

Smt. Farida Begum,.....Respondent
Village- Panchla (Sepia Para),
P.O. & P.S. Panchla,
Howrah-711 322
[PAN : AGZPB 5832 A]

&

C.O. No. 97/KOL/2013
(in I.T.A. No. 1307/KOL/ 2013)
Assessment Year: 2007-2008

Smt. Farida Begam,.....Cross Objector
Village- Panchla (Sepia Para),
P.O. & P.S. Panchla,
Howrah-711 322
[PAN : AGZPB 5832 A]

-Vs.-

Income Tax Officer,.....Respondent
Ward-46(1), Kolkata,
3, Government Place (West),
Kolkata-700 001

Appearances by:

Shri Sudipta Guha, JCIT, Sr. D.R., for the Department
Shri Soumitra Chowdhury, Advocate, for the assessee

Date of concluding the hearing : February 10, 2016

Date of pronouncing the order : March 04, 2016

O R D E R

Per Shri P.M. Jagtap :-

This appeal is preferred by the Revenue against the order of Id. Commissioner of Income Tax (Appeals)-XXX, Kolkata dated 21.12.2012 and the same is being disposed of along with Cross Objection filed by the assessee being C.O. No. 97/KOL/2013.

2. The solitary issue involved in the appeal of the Revenue relates to the deletion by the Id. CIT(Appeals) of the addition of Rs.34,84,677/- made by the Assessing Officer on account of unexplained liability towards labour charges.

3. The assessee in the present case is an individual, who is mainly engaged in the business of doing embroidery and other work executed on contract basis. The return of income for the year under consideration was originally filed by her on 29.10.2007 declaring total income of Rs.9,91,090/-. Subsequently revised return was filed by the assessee on 29.11.2007 declaring total income of Rs.17,62,400/-. During the course of assessment proceedings, it was noticed by the Assessing Officer that the gross profit declared by the assessee at 4.41% for the year under consideration was lower than the gross profit rate of 8.11% shown by the assessee in the immediately preceding year. Although the turnover of the assessee had increased substantially during the year under consideration, the Assessing Officer considered it necessary to verify the drastic fall in the gross profit rate. He, therefore, issued notices to the assessee fixing the hearing from time to time. There was, however, no compliance on the part of the assessee to the said notices and the Assessing Officer, therefore, was left with no option but to complete the assessment to the best of his judgment under section 144 of the Act. In the assessment so completed under section 144 vide an order dated 08.04.2009, the Assessing Officer estimated the income of the assessee by applying a

higher gross profit rate of about 6.91% and made a trading addition of Rs.10,00,000/-. He also made a further addition of Rs.34,84,677/- to the total income of the assessee on account of unexplained/bogus liability towards labour charges for the following reasons given in paragraph no. 5 of the assessment order:-

"5. In the audited balance sheet the assessee shown liability of Rs.75,46,700/- on account of labour charges. As per balance sheet filed with revised return the assessee shown liability of Rs.67,75,433/- on account of labour charges. On verification of the returns it was found that the difference of Rs.7,71,267/- in liabilities on account of labour charges in the balance sheets occurred due to reduction in liability made by the assessee and the same was added to the total income in the revised return. It means liability in the audited balance sheet is not correct. In the P&L A/c., the assessee debited Rs.3,94,89,073/- on account of labour charges. In case of works executed through labour, payments are generally made weekly or monthly basis. Therefore, the liability on account of labour charges will be payment of one month. The fact is also supported by the facts of assessee's case of assessment year 2006-07, where in total labour charges were Rs.1,23,45,150/- and outstanding labour charge was Rs.10,44,700/-, which is about 1/12th of total labour charges debited during the year. Therefore, considering the facts of the case Rs.32,90,756/- which is 1/12th of total labour charges shown by the assessee is considered to be liability of the assessee on account of labour charges and therefore, Rs.44,55,944/- is considered to be excess liability shown by the assessee. Since the assessee herself considered Rs.7,71,267/- as bogus liability and added to her total income in the revised return, Rs.34,84,677/- (Rs.75,46,700/- - Rs.7,71,267/- - Rs.32,90,765/-) is added to the total income of the assessee on account of cash credit specifically unexplained/bogus liability on account of labour charges shown in the balance sheet u/s.68 of IT Act. Penalty u/s.271(1)(c) is initiated separately".

4. Against the order passed by the Assessing Officer under section 144, an appeal was preferred by the assessee before the Id. CIT(Appeals) and after considering the submissions made by the assessee as well as the material available on record, the Id. CIT(Appeals) confirmed the trading addition of Rs.10,00,000/- made by the Assessing Officer. He, however, deleted the addition of Rs.34,84,677/- made by the Assessing Officer on

account of unexplained outstanding liability towards labour charges for the following reasons given in paragraph no. 5.2 of his impugned order:-

"5.2 The submissions of the Appellant have been considered and it is seen that the A.O. has disallowed Rs.34,84,677/- from outstanding liability on account of labour charges shown as on 31.03.2007 in the Balance Sheet u/s.68 on estimate basis by working out the same on the basis of 1/12th of total labour Charges after comparing the same with the claim in earlier years debited in the P&L A/c., holding the same to be a bogus liability. It is seen that while the A.O. has made the addition by estimating the Gross Profit he has also made a further addition towards bogus liability on grounds of the claim of the Appellant being not verifiable and excessive. At the outset, it may be mentioned that the addition towards outstanding liability for labour charges cannot be made u/s.68 as the same are not "cash credits". Even otherwise, on the merit of the addition it is seen these liabilities form part of the expenses debited in the trading Account against which the A.O. has made an estimated addition to the Gross Profit. Since the Assessment had been made u/s.144 the estimation of Gross Profit by the A.O. was justified in the absence of any supporting details and documents of the expenses claimed in the trading account. However, for the AO to again make a disallowance towards alleged bogus liability on account of labour charges debited in the trading account would amount to a double addition. It is further noted that the Appellant has already offered to tax a substantial amount of these outstanding liabilities for labour charges in its revised return of income which has not been rejected by the A.O. Further considering the business of the Appellant where the only direct expenditure is in fact labour and embroidery charges which may be considered as inflated in the present case however the entire expenses cannot be ruled out as being bogus. It is seen that the A.O. has already estimated the Gross Profit and has made a lump sum addition to the Gross Profit of the Appellant of Rs.10,00,000/-. Furthermore, the estimated disallowance made by the A.O. has also been done without any proper basis, since he has assumed that the payments were in the nature of wages and has therefore estimated the outstanding amount at 1 month or 1/12th of the labour charges debited in the Trading Account. In the case of the Appellant the outstanding payments were towards labour charges payable to outside persons or Karigars and not wages therefore the same could be outstanding for more than a month, therefore the basis itself for the disallowance is not correct. Therefore, considering all of the above, it is held that the A.O. was not justified in again making a disallowance from the outstanding liabilities towards labour

*charges and the disallowance made by the A.O. of
Rs.34,84,677/- is deleted”.*

Aggrieved by the order of the Id. CIT(Appeals), the Revenue has preferred this appeal before the Tribunal.

5. At the time of hearing before us, the Id. D.R. relied on the order of the Assessing Officer in support of the revenue's case on this issue while the Id. Counsel for the assessee strongly supported the impugned order of the Id. CIT(Appeals) giving relief to the assessee on the issue under consideration.

6. We have considered the rival submissions and also perused the relevant material available on record. As rightly held by the Id. CIT(Appeals), when the income of the assessee was estimated by the Assessing Officer by applying a higher gross profit rate, there was no case for making a separate disallowance on account of labour charges, which had been debited to the trading account. Once the gross profit of the assessee was estimated by the Assessing Officer by applying a higher gross profit rate, all the items appearing in the trading account were deemed to have been considered by the Assessing Officer while computing gross profit on estimated basis and the action of the Assessing Officer in making a disallowance separately on account of labour charges, which were debited to the trading account, in our opinion, clearly resulted in double addition as rightly held by the Id. CIT(Appeals). At the time of hearing before us, the Id. D.R. has also not been able to raise any contention to dispute or controvert this position. We, therefore, find no infirmity in the impugned order of the Id. CIT(Appeals) deleting the disallowance made by the Assessing Officer on account of outstanding liability towards labour charges and upholding the same on this issue, we dismiss the appeal of the Revenue.

7. As regards the Cross Objection of the assessee, it is observed that Ground No. 1 raised therein only supports the impugned order of the Id. CIT(Appeals) deleting the addition made on account of unexplained liability towards labour charges, while Ground No. 2 relating to the trading addition of Rs.10,00,000/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) is not pressed by the Id. Counsel for the assessee at the time of hearing before us. The Cross Objection filed by the assessee is accordingly dismissed.

8. In the result, the appeal of the Revenue and the Cross Objection of the assessee both are dismissed.

Order pronounced in the open Court on March 04, 2016.

Sd/-

Sd/-

(S.S. Viswanethra Ravi)
Judicial Member

(P.M. Jagtap)
Accountant Member

Kolkata, the 4th day of March, 2016

- Copies to :*
- (1) Income Tax Officer,
Ward-46(1), Kolkata,
3, Government Place (West),
Kolkata-700 001*
 - (2) Smt. Farida Begum,
Village- Panchla (Sepia Para),
P.O. & P.S. Panchla,
Howrah-711 322*
 - (3) Commissioner of Income-tax (Appeals)-XXX, Kolkata*
 - (4) Commissioner of Income Tax, Kolkata*
 - (5) The Departmental Representative*
 - (6) Guard File*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*