

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F' NEW DELHI**

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT
AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No. 652/Del/2014
Assessment Year: 2008-09

Paragon Shrink Packers (P) Ltd.	vs.	ITO
B-1, Extn, A-41,		Ward-14(1)
Mohan Co-operative, Industrial Estate		New Delhi.
New Delhi – 110 044		
PAN AACCP4074C.		
(Appellant)		(Respondent)

Assessee by : Shri S.S. Kalra, CA
Department by: Shri Amrit Lal, Sr. DR

Date of Hearing : 16.05.2016
Date of pronouncement : 25.5.2016

ORDER

PER CHANDRA MOHAN GARG, JUDICIAL MEMBER

This appeal by the assessee has been filed against the order of the Commissioner of Income Tax –XVII dated 1.11.2013 passed in appeal No. 133/10-11 for asstt. year 2008-09.

2. Grounds raised by the assessee read as under :-

"1. Ld. CIT(A) has erred in confirming the addition of Rs. 15 lakhs. The assessee produced the necessary evidence justifying loan received from Shri Ashok Kumar Jain of Rs. 5 lakhs and M/s. Candico (I) Pvt. Ltd. of Rs. 10 lakhs. The Ld. CIT(A) has not been appreciating, the evidence furnished by the assessee.

2. The Ld. CIT(A) has erred in confirming the addition of Rs. 12,18,500/- made by the Ld. AO because of non filing of record/evidence for verification of the expenses.

3. The Ld. CIT(A) has erred in confirming the addition of Rs. 73,052/- in respect of amount payable to M/s. Oswal Cable Products by ignoring the confirmation filed by the assessee in this respect."

3. Briefly stated the facts giving rise to the appeal as per record are that the case was selected for scrutiny and the AO completed assessment proceedings u/s 144 of the Income Tax Act 1961 (for short the Act) by making certain additions and assessed the taxable income at Rs. 83,86,910/- as against the returned loss of Rs. 13,47,550/-. The aggrieved assessee filed an appeal before Ld. CIT(A) which was partly allowed. However, the Ld. CIT(A) confirmed addition of Rs. 15 lacs on account of unsecured loans, confirmed the addition of Rs. 12,18,500/- on account of estimation of net profit and also confirmed addition of Rs. 73,052/- in respect of amount payable

to M/s. Oswal Cable Products on account of unsecured sundry creditors. Now the empty handed assessee is before this Tribunal in this second appeal with the grounds as reproduced hereinabove

4. **Ground No. 1** apropos ground No. 1 the Ld. Assessee's representative (AR) submitted a copy of the remand report dated 14.12.2012 submitted to the Ld. CIT(A) by the AO and drawn our attention towards para 1 and submitted that the AO completed assessment ex parte u/s 144 of the Act and the assessee submitted bank statement of Shri Ashok Kumar Jain showing transfer of Rs. 5 lac from his account maintained with ICICI bank to the assessee's bank account through cheque No. 632932 dated 21.6.2007 and confirmation was also filed by Shri Ashok Kumar Jain supported by his Income Tax Return. The Ld. AR also contended that in respect of addition of Rs. 10 lacs received from M/s. Candico (I) Pvt. Ltd. was also filed before Ld. CIT(A) and AO verified the same in his remand report and there is no allegation of the AO in the remand report. Ld. AR vehemently contended that in this situation when the AO after verification and examination of the confirmations, copy of the bank statement and ledger account coupled with copies of Income Tax

Return of the respective loan creditors . No addition could be made and sustained.

5. Ld. DR strongly supported the action of the AO as well as the first appellate order, however, he did not controvert this fact that the AO has not made any adverse comments in his remand report dated 14.12.2012 submitted to the Ld. CIT(A) in regard to unsecured loans from Shri Ashok Kumar Jain and M/s. Candico (I) Pvt. Ltd.. In view of above noted facts and circumstances of the present case we are of the considered view that when the assesee is properly disclosing source of unsecured loans which is also supported by the confirmations, copies of the bank statement, Income Tax Report of the creditors and their confirmations then without any allegation or incriminating facts or document no addition in this regard can be made and sustained. Thus we are of the considered opinion that addition made by the AO and confirmed by the Ld. CIT(A) has no legs to stand on the footings of the respective provisions of the Act. Therefore, we are inclined to accept contentions of the Ld. AR and the conclusions of the authorities below are dismissed and the AO is directed to delete the addition. Accordingly. Ground No. 1 is allowed.

6. **Ground No. 2** apropos ground No. 2 the Ld. AR vehemently contended that the CIT(A) has erred in confirming the addition of Rs. 12,18,500/- made by the AO because of non filing of record and evidence for verification of expenses. Ld. AR also took us through the relevant operative part of the assessment order and impugned first appellate order and contended that all the account of the assessee has been duly audited by the Chartered Accountant and the AO has not given any reason for arriving at addition of 10% of the total turnover. The Ld.AR strenuously contended that the assessee has maintained regular books of account which were also audited by a competent authority. Therefore, without bringing out any allegation against the correctness of the financial result of the assessee the addition made on estimation basis is wrong and bad in law.

7. Replying to the above, supporting the action of the authorities below, the Ld. DR drawn our attention towards relevant operative para 'c' of the assessment order para 8.1 & 8.2 of the impugned order and submitted that the assessee was given opportunities to furnish all the books of accounts and relevant documents in support of the claim of expenses debited in the P & L account but the assessee

did not produce the same and therefore the AO was correct in determining and estimating the net profit of the assessee @ 10% of turnover. Ld. DR also pointed out that even during the remand proceedings the AO stated that no details and evidence were filed for verification of expenses claimed in the P & L account of the assessee. The DR vehemently pointed out that even before the CIT(A) during the first appellate proceedings the assessee has not produced any documents to verify the expenses claimed in P & L account. Therefore the CIT(A) was quite correct and justify in upholding and confirming the addition made by the AO in this regard.

8. On careful consideration of the above submissions from the operative part of the assessment order para C at page 3 we note that the AO made addition by observing as under :-

"C) During the course of assessment proceedings, despite giving repeated opportunities and particularly vide order sheet entry dated 18.11.2010, AR of the assessee was asked to furnish complete books of account, including Bills/vouchers, salary and wages Registers and other necessary supporting documentary evidence in support of expenses claimed in Profit and loss account to verify the genuineness of the business results. However, till date no books of accounts have been produced for verification. As per Profit and Loss account, the total turnover has been shown at Rs. 1,21,85,005/- and other income shown at Rs. 7,75,000/- in the absence of books of account, the correctness and genuineness of the expenses

claimed in the P & L are not verifiable. Therefore, the net profit of the assessee during the year is taken at Rs. 12,18,500/- which is 10% of the total turnover and added to the income."

9. From the relevant para of the first appellate order we observe that the CIT(A) has confirmed the addition with following conclusions

:-

"8.1. The AO in the order stated the appellant was given opportunities to furnish all books of account and documents in support of claim of expenses debited in the P & L A/c. The appellant however did not produce any books of account or documents. The AO therefore determined the net profit of the appellant at 10% of the turnover.

8.2. Even during remand proceedings the AO has stated that no details / evidence filed was filed for verification of expenses in the P & L A/c. Even before me in appellate proceedings, the appellant has not produced any documents to verify the expenses in the P & L A/c. I therefore confirm the addition of Rs. 12,18,500/- made by the AO. The ground of appeal is ruled against the appellant."

10. In view of above conclusion of the authorities below at the very outset we note that as per section 145 (3) of the Act where the AO is not satisfied about the correctness or completeness of the accounts of the assessee then the AO may make an assessment in the manner provided in section 144 of the Act. In the present case the AO explicitly observe that despite giving repeated opportunities and

particularly vide order sheet entry dated 18.11.2010 the AR of the assessee was asked to furnish complete books of accounts including bills, vouchers, salary and wages registers and other necessary supporting documents etc. in support of the expenses claimed in the P & L account to enable the AO to verify the genuineness of the business results but no books of accounts have been produced for verification during the assessment proceedings. We further observe that even during the remand proceedings before the AO assessee did not produce the same and the assessee was also failed to submit the same during the appellate proceedings as observed by the CIT(A) in para 8.2 as reproduced hereinabove . In the above noted factual situation, we are of the opinion that the authorities below were quite correct and justified in estimating the net profit of the assessee @ 10% of the turnover and this estimation has not been challenged by the assessee in any manner. Therefore we decline to accept contention of the assessee in this regard and thus we uphold the conclusions of the AO which has been upheld by the CIT(A) by passing the impugned order . Consequently the ground No. 2 of the assessee being devoid on merits is dismissed.

11. **Ground No. 3** appropose ground No. 3 the Ld. AR submitted that the CIT(A) has erred in confirming the addition of Rs. 73,052 in respect of amount payable to M/s. Oswal Cable Products by ignoring the confirmation filed by the assessee. He further drawn our attention towards remand report dated 14.12.2012 para III (3) at page 2 and submitted that during the assessment proceedings details of sundry creditors was filed before the AO which clearly reveals that the opening balance of M/s. Oswal Cable Products was of Rs. 690260/- and no payments were made during the year. Ld. AR further pointed out that in the first part of this para (III) the AO himself mentioned that the AO has made addition of Rs. 73,052/- as unconfirmed sundry creditors and as per copy of the account of M/s. Oswal Cable Products filed for the financial period 1.3.2007 to 31.3.2008 shows opening balance of Rs. 9,68,011/- and closing balance of Rs. 7,63,312/- showing payments of Rs. 2,04,699/- during the relevant period. Therefore it was contended by the Ld. AR that the AO in the second part of this para (C) of remand report wrongly observe that the opening balance of M/s. Oswal Cable Products which led to this

addition and the AO wrongly noted amount of Rs. 690260/- as opening balance therefore this addition should be deleted.

12. Ld. DR strongly supported the action of the AO and submitted that when there was no payment by the assessee to M/s. Oswal Cable Products then the addition was correctly made by the AO and CIT(A) was quite justified in upholding the same.

13. On careful consideration of the rival submissions, we note that the AO himself mentioned in his remand report (supra) submitted to the CIT(A) that as per confirmed copy of the account of M/s. Oswal Cable Products filed for the relevant period shows credit balance of Rs. 7,63,312/- at the end of the year which was taken by the AO as Rs. 6,90,260/- for making addition of Rs. 73,052/- and thus we hold that when the AO has himself noted this fact that the assessee made payment of Rs. 2,04,699/- during the period to said creditor leaving the closing balance of Rs. 7,63,312/- then as per confirmed copy of account of M/s. Oswal Cable Products closing balance can not be reduced to Rs. 6,90,260/- for making a baseless addition. Therefore, we inclined to accept contention of the Ld. AR that the addition made by the AO are upheld by the CIT(A)

amounting to Rs. 73,052/- (Rs. 7,63,312/- - Rs. 6,90,260/-) pertaining to M/s. Oswal Cable Produces based on incorrect factual observations of the AO is not sustainable and thus we demolish the same and AO is directed to delete the impugned addition. Accordingly, ground No. 3 of the assessee's appeal is allowed.

14. Finally, ground No. 2 of the appeal is dismissed and ground No. 1 & 3 are allowed. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 25th May, 2016.

**SD/-
(G.D. AGRAWAL)
VICE PRESIDENT**

**SD/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER**

Dated 25th May, 2016
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Copy of order forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By Order

Asstt Registrar, ITAT