

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

AND

SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

I.T.A. Nos. 4507 TO 4511/DEL/2013		
A.Yrs. : 2000-01 TO 2004-05		
ASSTT. COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-18, ROOM NO. 37, ARA CENTRE, E-2, JHANDEWALAN EXTN. NEW DELHI - 110 055	VS.	SH. SANJEEV DHINGRA, PROP. SHAH KNITS, A-40/21, DLF CITY, PHASE-I, GURGAON
(APPELLANT)		(RESPONDENT)

CROSS OBJECTION NOS. 195 TO 198/DEL/2014 (IN ITA NOS. 4508 TO 4511/DEL/2013)		
A.Yrs. : 2001 02 TO 2004-05		
SH. SANJEEV DHINGRA, PROP. SHAH KNITS, A-40/21, DLF CITY, PHASE-I, GURGAON (PAN: ADSPD3903E)	VS.	DCIT, CENTRAL CIRCLE -18, NEW DELHI
(APPELLANT)		(RESPONDENT)

Department by : Sh. S.S. Rana, CIT(DR)
Assessee by : None

ORDER

PER H.S. SIDHU : JM

Revenue has filed these 05 appeals which emanate from the respective orders for 2000-01 TO 2004-05 of the Ld. CIT(A) and the assessee has filed 04 Cross Objections against the respective impugned

orders of the Ld. CIT(A) relevant for the assessment years 2001-02 to 2004-05. Since the issues involved in these appeals are common and identical, hence, the appeals and the Cross Objections were heard together and are being disposed of by this common order, by dealing with assessment year 2000-01.

2. The common grounds raised in Revenue Appeals read as under:-

"(i) On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in allowing deduction u/s. 80HHC by holding the export activity of the assessee as genuine.

ii) On the facts and in the circumstances of the case, the CIT(A) has erred in allowing deduction u/s. 80HHC on the one hand whereas on the other hand upheld the action of AO for rejecting the books of account by invoking the provisions of Section 145.

iii) On the facts and in the circumstances of the case, the CIT(A) has erred in ignoring the remand report and thereby violating the provisions of rule 46 Of the Income tax Rule, 1962, by not giving two stage opportunity under Rule 46A, i.e. first before admission of additional evidences and second after admission of additional evidence.

iv) The order of the CIT(A) is erroneous and is not tenable on facts and in law.

v) *The appellant craves leave to add, alter or amend any/ all of the grounds of appeal before or during the course of the hearing of the appeal.*

3. The brief facts of the case are that search and seizure operation in SL Dhingra group of cases was conducted on 31.7.2003. On the basis of Panchnama drawn in the case of assessee, notice u/s. 153A of the Income Tax Act, 1961 (hereinafter referred as the Act) was issued on 17.2.2005. In response thereto return declaring income of Rs. 90,000/- was filed on 28.4.2005. A detailed questionnaire alongwith notice u/s. 142(1) of the Act and u/s. 143(2) of the Act were issued on 09.1.2006 fixing the case for 18.1.2006. Further notices u/s. 142(1) dated 10.2.2006 and notice u/s. 142(1) dated 15.2.2006 alongwith questionnaire were issued. In response to the notices, the A.R. of the assessee attended the proceedings from time to time and necessary details and clarifications as required have been filed. The assessee is carrying business under the proprietorship concern in the name of Style of Shah Knits. After taking into consideration all the relies filed by the assessee and the seized materials, the income of the assessee was assessed. The assessee declared net profit as per profit and loss account amounting to Rs. 42,99,422/- and claimed deduction u/s. 80HHC against this profit amounting to Rs. 42,99,422/-. The investigation in this case was conducted to assess the correct income of the assessee and accordingly, the AO assessed the assessee's income at Rs. 82,28,298/- against the

return income of Rs. 90,000/-, by making following additions and passed the assessment order dated 28.3.2006.

- i) Bogus export receipts : Rs. 79,92,798/-
- ii) Unexplained credit in the capital account : Rs. 85,500/-
- iii) Undisclosed household expenses : Rs. 1,50,000/-

4. Aggrieved by the order of the AO, the assessee preferred an appeal before the Ld. CIT(A) who vide his impugned order dated 08.5.2013 has deleted some of the additions and partly allowed the appeal of the assessee.

5. Aggrieved with the Ld. CIT(A)'s order, the Revenue is in appeal and assessee has filed Cross Objections.

6. Ld. DR during the hearing has relied upon the order of the AO and reiterated the contentions raised in the grounds of appeal.

7. In this case Notice of hearing to the assessee was sent by the Registered AD post, in spite of the same, assessee, nor his authorized representative appeared to prosecute the matter in dispute, nor filed any application for adjournment. Keeping in view the facts and circumstances of the present case and the issue involved in the Appeals, we are of the view that no useful purpose would be served to issue notice again and again to the assessee,

therefore, we are deciding the present appeal exparte qua assessee, after hearing the Ld. DR and perusing the records.

8. We have heard Ld. DR and perused the records, especially the orders of the revenue authorities, we find that in assessee's case it was seen that same and identical facts are there as were existing in the Anil Dhingra and Renu Dhingra cases, accordingly, during the appellate proceedings, on the following specific query, the report of the AO was sought vide letter dated 23.10.2006.

"To make necessary enquiries with the custom authorities regarding the genuineness of exports made by appellant from assessment year 2000-01 to 2004-05."

8.1 We note that the AO with regard to the above query vide his letter dated 17.8.2007 stated that *"The report regarding genuineness of export made by the assessee firm is still awaited. Hence you are requested that the case may be decided on merits."*

8.2 Further even on 09.08.2012 the assessee filed an affidavit to the effect that no govt. agencies have initiated any proceedings for fraudulent exports till date, and this affidavit too was forwarded to the AO for any adverse comments on the assessee's affidavit, if any. The AO vide his letter dated 21.1.2013 didn't brought any iota of evidences, to the effect, showing that any adverse finding or action is initiated by custom or FEMA

authorities leading to conclusion that no genuine exports were carried by the assessee. Hence, in view of the above and relying on the spirit of the decision given by Jurisdictional High Court in the case of CIT vs. M.S. International Ltd. (ITA NO. 999/2006) dated 28.09.2012 and also relying on the ITAT's order dated 21.11.1998 in the case of Rita Dhingra (Assessment Years 2001-02 to 2004-05) and ITAT's order dated 04.01.2009 in the case of Anil Dhingra (Assessment years 1998-99 to 2001-02), where similar and identical facts were there as that of the assessee and also taking into consideration, totality of all the facts and circumstances and evidences on record, Ld. CIT(A) has rightly held that, in the facts of the assessee's case also, the AO's finding that (a) there were no genuine exports and (b) the remittances received in Hawala money of the assessee is not correct, as it is not backed by any evidences to the country. Hence, in view of the above, the export made by the assessee during the assessment years 2000-01 to 2004-05 were treated as genuine export, which does not need any interference on our part, hence, we uphold the same.

8.3 We find that Ld. CIT(A) after considering the peculiar facts of this case where sales are admitted to be genuine but the authenticity of parties to whom payments have been made for purchases; fabrication and packing expenses etc. are in doubt, therefore to prevent any miscarriage of justice, has rightly proceeded to estimate the reasonable profit of the assessee which he would have made on making export sale of Rs.1,14,67,513 in Assessment Year 2000-01. Similarly in assessment

year 2001-02, it was observed that assessee had paid fabrication/packing expenses of Rs. 23,65,704 to one H.S. Rao & Co. and made the purchases of Rs. 72,21,512. It is further noted that in respect of all the purchases/fabrication expenses, the assessee failed to produce them before the AO as well as failed to give the confirmed copy of the accounts including income tax particulars and proof of filing the return of income to the AO. Therefore, in assessment year 2001-02 also, Ld. CIT(A) has rightly held that the book results are not reliable and they deserve to be rejected, hence, the same was rejected by the Ld. CIT(A), which does not need any interference.

8.4 We further find that since the assessment year 2000-01 is very first year of the assessee's operation and no past history is available and the products which are sold by the assessee are altogether different one than the products sold by other concerns of Dhingra group, therefore to prevent leakages of any revenue, Ld. CIT(A) has rightly estimated the net profit @ 35% of sales (including export benefits) as against the net profit of 32.33% shown by the assessee. Hence, the AO was directed to re-compute the income by giving credit for allowable deductions available to the appellant in the light of the aforesaid findings, which does not need any interference on our part, therefore, we uphold the same.

8.5 As discussed above having held that the exports are genuine than in such a scenario it is quite obvious that the purchases as well fabrication/packing material have been purchased may be not from Savita Enterprises and Loyat Enterprises but definitely from someone else. And,

considering the fact that there is no concept of free lunch in any commercial transaction and no one will give credit for indefinite period for extra ordinary long period as by alleged supplier i.e. Savita Enterprises and Loyat Enterprises in the year under consideration, accordingly, Ld. CIT(A) made further an addition of Rs.15,00,000 as capital required to carry the activities outside the books in the form of making purchases as well for fabrication/packing expenses of Rs.85,00,000 approx. from the suppliers other than Savita Enterprises and Loyat Enterprises during the Assessment Year 2000-01.

8.6 As regards the profit estimation for other years viz. Assessment Years 2001-02 to 2004-05, for which the assessee is also in appeal before the Ld. CIT(A), it was seen from the details of net profit and gross profit, that there are wide fluctuations as is evident from the table mentioned at page no. 6 to 7 of the impugned order for assessment year 2000-01. During the course of appellate proceedings the assessee gave the reason for such a wide fluctuation in the profit but they are too general in nature. But as discussed above since in Assessment Year 2001-02 to 2004-05 also, with regard to the purchases and fabrication/packing expenses there are serious doubt about the genuineness of expenditures from the parties mentioned in the assessee's books of accounts, therefore in those years too, Ld. CIT(A) held that the books results are not reliable and they do not give the true and fair view of assessee's state of affair. Accordingly, by invoking the provisions of section 145, Ld. CIT(A) has rightly rejected the books results of Assessment Year 2001-02 to 2004-05 also, and

estimate the profit also @ 35% which is quite reasonable and does not need any interference on our part. In the result, the Revenue's appeal stand dismissed.

8.7 As regards other Revenue's Appeals i.e. assessment year 2001-02 to 2004-05 are concerned, following the consistent view as taken in assessment year 2000-01, as aforesaid, the Revenue's Appeals for the assessment year 2001-02 to 2004-05 also stand dismissed.

ASSESSEE'S CROSS OBJECTIONS:-

9. The common and identical grounds are involved in the Cross Objection no. 195 to 198/DEL/2014 which read as under:-

"The Ld. CIT(A) erred, on the facts and in view of the circumstances of the case, in confirming the business income of the appellant @ 35% of total exports and export incentives, which is excessive and arbitrary."

10. Since we have already upheld the order of the learned CIT(A) in confirming the business income of the assessee @35% of total exports and export, in the Revenue Appeals, as aforesaid, the contention of the assessee made in the grounds of Cross Objections that the business income @35% of total exports and export is excessive and arbitrary is not justified, hence, the Cross Objections filed by the assessee has become infructuous and therefore, the same are dismissed as such. As a result, all the 04 Cross Objections filed by the assessee also stand dismissed.

11. In the result, all the 05 Revenue's appeals and 04 Assessee's Cross Objections stand dismissed.

Order pronounced in the Open Court on 06-10-2017.

Sd/-

Sd/-

**[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER**

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date 06/10/2017

**“SRBHATNAGAR”
Copy forwarded to: -**

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

TRUE COPY

By Order,

Assistant Registrar,
ITAT, Delhi Benches