

INCOME TAX APPELLATE TRIBUNAL DELHI BENCH “F”: NEW DELHI

BEFORE

DR. BRR KUMAR, ACCOUNTANT MEMBER AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA Nos.5149 & 5150/Del/2019
Asstt. Years 2011-12 & 2012-13

ITO Ward 54(5), New Delhi.	Vs.	Shri Roshan Lal Sharma, C-4/187, Dayanand Colony, Lajpat Nagar-IV, New Delhi – 110 024 PAN AUQPS1437F
(Appellant)		(Respondent)

Assessee by:	Shri Ratnesh Gupta, CA
Department by:	Shri Vivek Vardhan, Sr. DR
Date of Hearing:	31.08.2023
Date of pronouncement:	21.09.2023

ORDER

PER ASTHA CHANDRA, JM

The appeals filed by the Revenue are directed against the consolidated order of the Ld. Commissioner of Income Tax (Appeals)-35, New Delhi (“CIT(A)”) dated 01.03.2019 pertaining to Assessment Year (“AY”) 2011-12 and 2012-13.

2. The Revenue has raised the following grounds of appeal:-

AY 2011-12

- “1. On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in deleting the addition of Rs. 1,73,33,666/- on account of disallowance of 40% of total direct/indirect expenses.
2. On the facts and circumstances of the case, Ld. CIT(A) erred in admitting the fresh/additional evidence under Rule 46A of the I.T. Rules, 1962 despite the fact that the A.O. had vide his remand report

requested that assessee may not be allowed to submit fresh evidence, as it does not qualify for the same in view of the explicit provisions laid down under Rule 46A of the I.T. Rules, 1962.

3. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 51,653/- on account of disallowance of assessee's claim u/s 80C of the IT Act.”

AY 2012-13

- “1. On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 1,75,71,490/- on account of disallowance of 40% of total direct/indirect expenses.
2. On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 76,09,453/- on account of difference in the opening stock figure of current year with closing stock figure of previous year.
3. On the facts and circumstances of the case, Ld. CIT(A) erred in admitting the fresh/additional evidence under Rule 46A of the I.T. Rules, 1962 despite the fact that the A.O. had vide his remand report requested that assessee may not be allowed to submit fresh evidence, as it does not qualify for the same in view of the explicit provisions laid down under Rule 46A of the I.T. Rules, 1962
4. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 51,653/- on account of disallowance of assessee's claim u/s 80C of the IT Act.”
3. The facts in brief are that the assessee individual is in the business of manufacturing and export of garments in the name and style of M/s. P6 Design. He filed his return for AY 2011-12 on 29.11.2011 and for AY 2012-13 on 29.03.2013 declaring income of Rs. 11,27,066/- and Rs. 13,80,340/- respectively. Both the returns were processed under section 143(1) of the Income Tax Act, 1961 (the “Act”). Both the cases were selected for scrutiny through CASS. The reason given for selection in AY 2012-13 is “difference in the opening stock figure of current year with the closing stock figure of the previous year”. In response to statutory notice(s) for AY 2011-12 one appearance on 18.10.2013 was made and brief details of some expenses were filed by the assessee. Thereafter the assessee did not respond to notices leading to ex-parte order passed by the Ld. Assessing Officer (“AO”) on 04.03.2014 on total income of Rs. 1,85,12,385/-

including therein disallowance of Rs. 1,73,33,666/- being 40% of total direct/indirect expenses claimed at Rs. 4,33,34,166/- and disallowance of deduction of Rs. 51,653/- claimed under section 80C of the Act. For AY 2012-13 also statutory notices were not complied with resulting in ex-parte assessment framed on 26.03.2015 under section 144 of the Act on total income of Rs. 2,66,12,936/- including therein disallowance of Rs. 1,75,71,490/- being

40% of direct/indirect expenses claimed at Rs. 4,39,28,726/-; addition of Rs. 76,09,453/- being difference between opening stock of AY 2012-13 and closing stock of the preceding AY 2011-12 and disallowance of Rs. 51,653/- claimed under section 80C of the Act.

4. Aggrieved, the assessee filed appeals in both the years before the Ld.

CIT(A) challenging the disallowances and addition made by the Ld. AO.

5. During appellate proceedings, the assessee filed additional evidence under Rule 46A of Income Tax Rules, 1962 (“the Rules”). The Ld. CIT(A) obtained remand report from the Ld. AO who objected to admittance of additional evidence on grounds of non-compliance of notices issued during assessment proceedings. Before the Ld. CIT(A) the assessee explained that his mother was critically ill and he was staying in his hometown in Jammu. Further, the assessee was involved in dispute with other communities in the period and his entire family was living in great fear and tension. Accepting the assessee’s explanation and relying on the decision of Hon’ble Delhi High Court in CIT vs. Virgin Securities & Credits (P) Ltd. 332 ITR 396 (Del), the Ld. CIT(A) admitted the additional evidence furnished before him for adjudication of issues involved.

5.1 On the issue of disallowance of Rs. 1,73,33,666/- and Rs. 1,75,71,490/- being 40% of direct and indirect expenses out of Rs. 4,33,34,166/- and Rs. 4,39,28,726/- in AY 2011-12 and 2012-13 respectively, the Ld. CIT(A) observed in para 4.5.4.4 of the appellate order that the assessee filed all the relevant documents like tax Audit Report, Balance sheet, P&L account, copies of sales, purchase and expenses bills, copy of ledger accounts, confirmation from parties etc. during the appellate proceedings which have been admitted. Therefore, ad-hoc disallowances in both the

AY(s) made by the Ld. AO in the absence of documents substantiating the books of account are deleted.

5.2 As regards the disallowance of Rs. 51,653/- claimed under section 80C in AY 2011-12 and 2012-13 made by the Ld. AO for want of proof, evidence was submitted before the Ld. CIT(A) regarding payment of LIC premium of Rs. 40,958/- (Rs. 25,000/- to Aviva Life Insurance & Rs. 15,958/- to LIC) and Tuition Fee of Rs. 10,695/-. The Ld. CIT(A) therefore deleted the impugned disallowance of Rs. 51,653/- under section 80C in both the AY(s).

5.3 Regarding difference of Rs. 76,09,453/- in opening /closing stock in AY 2012-13 added by the Ld. AO, the Ld. CIT(A) observed and recorded the following findings in para 4.5.4.7:

“4.5.4.7. The AR has stated that the difference is nothing but due to clerical mistake in filing the ITR. Due to this even assessment year 2013-14 was under scrutiny and this difference was explained to AO and there was no addition made by the AO on this issue in A.Y. 201314 (Copy of the Assessment Order for assessment year 2013-14 filed during appellate proceedings). The AR has submitted the full details on the issue which the appellant has stated is due to clerical mistake and the same is reproduced below:

Particulars	As Per Sheet	Balance	As per ITR Filed		Difference
			Balance Sheet	Profit & Loss	
F.Y 2010-11					
Opening Stock	55,14,934.00	-		55,14,934.00	
Closing Stock	76,09,453.00	76,09,453.00		76,09,453.00	
F.Y 2011-12					
Opening Stock	76,09,453.00	-		0.00	76,09,453.00
Closing Stock	1,25,99,480.00	1,25,99,480.00		49,90,027.00	-76,09,453.00

F.Y 2012-13				
Opening Stock	1,25,99,480.00	-	1,25,99,480.00	
Closing Stock	2,37,71,210.00	2,37,71,210.00	2,37,71,210.00	

The AR has submitted that the above details were also given at the time of assessment of assessment year 2013-14 before the respective AO and the same was accepted. The AR has stated that there was a clerical mistake made by the Article/staff at the time of filling the ITR Form for FY 2011-12, where ne inadvertently and wrongly filled '0' (at point No. 6 of Part A of P&L A/c of the said return of Income) in place of 76,09,453.00 in the opening stock column and accordingly shown the difference (1,25,99,480.00 minus 76,09,453.00 = 49,90,027.00) in the closing stock column of Profit & Loss Account, whereas he himself mentioned the right figure of closing stock in the Balance Sheet I.e. Rs. 1,25,99,480.00 (at point No. 3 of Application of Fund of Part A of BS of the said return of Income). Therefore, the AR of the appellant has argued that there was a mistake due to carelessness but there was no mala-fide intension on the part of the appellant. “

5.3.1 On consideration of the above submissions of the assessee and accepting the explanation the Ld. CIT(A) deleted the impugned addition.

6. It is against the aforesaid deletion of disallowances/addition by the Ld. CIT(A) that the Revenue is in appeal before the Tribunal in AY 2011-12 and 2012-13.
7. We have heard the Ld. Representative of the parties and perused the records. It is not in dispute that the assessment in AY 2011-12 and 2012-13 has been made ex-parte under section 144 of the Act for non-compliance of notice(s) of hearing. Before the Ld. CIT(A) the assessee furnished explanation for not responding to various notice(s) issued by the Ld. AO which has been accepted. Nothing adverse has been placed on record before us by the Ld.

DR to doubt the veracity of explanation offered by the assessee.

7.1 It is observed that due to constraints the assessee could not produce evidence in support of the claims made by him in the return of both the AY(s). He therefore, urged the Ld. CIT(A) to admit additional evidence under Rule 46A of the Rules. The Ld. CIT(A) afforded opportunity to the Ld. AO and asked for remand report from him. The Ld. AO in his remand report only objected to admittance of additional

evidence by the Ld. CIT(A). If he wanted, he could have examined the contents of the additional evidence furnished by the assessee during the course of remand proceedings but the Ld. AO did not do anything of the sort. On these facts, we are of the view that in the interest of justice and backed by the decision of Hon'ble Delhi High Court in Virgin Securities & Credits (P) Ltd. (supra) the Ld. CIT(A) was perfectly justified in admitting the additional evidence and adjudicating the issues raised before him by the assessee.

8. The common ground of the Revenue in AY 2011-12 and 2012-13 relates to ad-hoc 40% disallowance out of direct/indirect expenses claimed by the assessee and disallowance of claim under section 80C. On the basis of evidence produced by the assessee and admittance thereof under Rule 46A of the Rules, the Ld. CIT(A) has deleted the above disallowances. Nothing has been brought on record by the Revenue to enable us to take a view different from that of the Ld. CIT(A). Accordingly, we reject the grounds related to deletion of these disallowances by the Ld. CIT(A) in both the AY(s).
9. As regards the addition on account of difference in opening stock of the current year and closing stock of the preceding year, the Ld. CIT(A) has accepted the explanation offered by the assessee before him and deleted the addition. The explanation furnished by the assessee before the Ld. CIT(A) could not be faulted before us by the Revenue. We, therefore, reject this ground of the Revenue raised in AY 2012-13.
10. In the result, both the appeals of the Revenue for AY 2011-12 and 2012-13 are dismissed.

Order pronounced in the open court on 21st September, 2023.

sd/-
(DR. BRR KUMAR)
ACCOUNTANT MEMBER

sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Dated: /09/2023

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Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	