

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : C : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.5750/Del/2018
Assessment Year: 2014-15

Jaidka Woolen & Hosiery Mills P. Vs ITO,
Ltd., Ward-13(2),
D-6, NDSE, Part I, New Delhi.
New Delhi.

PAN: AAACJ0351N

(Appellant)		(Respondent)
Assessee by	:	Shri Ashwani Kumar, CA
Revenue by	:	Shri Kumar Padmapani Bora, Sr. DR
Date of Hearing	:	17.11.2021
Date of Pronouncement	:	14 .02.2022

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 5th July, 2018 of the CIT(A)-5, Delhi, relating to AY 2014-15.

2. The assessee has raised only one ground of appeal which reads as under:-

öThat order passed u/s 250(6) of the Income Tax Act, 1961 by the Ld. Commissioner of Income Tax (Appeals)-5, Delhi is against law and facts on the file inasmuch as he was not justified to arbitrarily uphold the action of the Ld. Assessing Officer in disallowing a sum of Rs.10,80,754/- being 6.5% out of Rs.1,66,26,991/- paid as fabrication charges in cash on the alleged ground that some of the bills/vouchers are unverifiable.ö

3. Facts of the case, in brief, are that the assessee is a company engaged in the business of manufacturing, exporting and trading of hosiery/readymade goods. It filed its return of income on 23rd September, 2014 declaring a loss of Rs.10,98,118/-. During the course of assessment proceedings, the AO noted that the assessee company has paid for job work amounting to Rs.1,80,24,066/-. He asked the assessee to furnish complete details of such payment i.e., party-wise, mode of payment and payment proof. From the various details furnished by the assessee, the AO noted that the assessee has made cash payment of Rs.1,66,26,991/- out of Rs.1,80,24,066/- under the head 'Job work'. He, therefore, asked the assessee to furnish the reason for payment of such big amount in cash and addresses of such persons to whom payments were made in order to cross verify the genuineness of such payments. However, the AR of the assessee company expressed the inability in producing the addresses of so many numbers of individuals who are migrant workers coming from various parts of the country. It was submitted that they do come during the season and leave the place. From the various bills produced before him, the AO noted certain discrepancies and confronted the same to the assessee. Rejecting the various explanations given by the assessee, the AO disallowed an amount of Rs.10,83,754/- being 6.5% of the cash payment of Rs.1,66,26,991/- towards job work considering the same to be unverifiable.

3.1 In appeal, the Id.CIT(A) upheld the action of the AO by observing as under:-

¶4.4 The order of the AO as well as the arguments of the appellant have been examined. The order of the CIT(A) for the year 2012-13 is also seen. It is seen that the CIT(A) had given relief of the entire addition of Rs. 6,24,58,750/- for that year. The CIT(A) has stated that books of accounts were examined, since they were not produced before the AO. In the present case in the year under reference the AO has examined the books of accounts and the AO has also given detailed reasoning with reference to additions made. The AO has further made an addition of only 6.5% of the total amount paid in cash, despite noticing concrete instances of defects in the bills produced by the appellant. The addition made by the AO is therefore reasonable and is upheld.

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

5. The Id. Counsel for the assessee submitted that no specific defect was pointed out by the AO and the addition was made on ad hoc basis which is not justified especially when the books of account are audited and the auditors have not pointed out any mistake. He submitted that the system of accounting as well as the nature of business is same. Referring to the order of the Tribunal in assessee's own case for AY 2012-13 copy of which is placed at pages 67 to 96 of the paper book, he submitted that against the order of the CIT(A) for AY 2012-13, the Revenue had filed an appeal and the Tribunal vide ITA No.5302/Del/2015 and CO No.409/Del/2015, order dated 01.10.2018, has dismissed the appeal filed by the Revenue against the order of the CIT(A) deleting the addition of Rs.6,24,58,750/- on account of cash payment for fabrication work. He accordingly submitted that

this being a covered matter in favour of the assessee, the ground raised by the assessee should be allowed.

6. The ld. DR, on the other hand, heavily relied on the orders of the AO and the CIT(A). He submitted that in the instant case, the AO had found discrepancies in the bills which were verified by the AO and photocopies of which are available in the assessment order. He submitted that a perusal of the same would show that there is no certainty of the payments. Further, principles of res judicata do not apply to income-tax proceedings and every year is different. He accordingly submitted that since the order of the AO is a reasoned one and the CIT(A) has dismissed the ground raised by the assessee after analysing the facts of the case, therefore, the same should be upheld and the ground raised by the assessee should be dismissed.

7. We have heard the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We find, the AO, in the instant case, disallowed an amount of Rs.10,80,754/- being 6.5% of the cash payment of Rs.1,66,26,991 against the job work on account of glaring discrepancies in the fabrication charges for which cash payments were made. We find, the ld.CIT(A) upheld the action of the AO, the reasons of which have already been reproduced in the preceding paragraph. We find, identical issue had come up before the Tribunal in assessee's own case for AY 2012-13 wherein the ld.CIT(A) deleted the entire addition of Rs.7,58,31,017/- which included an

amount of Rs.6,24,58,750/- paid in cash for fabrication work. We find, the Tribunal, vide ITA No.5302/Del/2015 and CO No.409/Del/2015, order dated 01.10.2018 has dismissed the ground raised by the Revenue by observing as under:-

ö20. We have considered the rival submissions and perused the material available on record. The assessee is engaged in business of manufacture, exporter and trading of hosiery readymade goods. In this nature of business, fabrication charges are essential for conduct of business and to earn income. The assessee filed complete details in the paper book to show the name of the fabricator and his address. These are mostly amount paid to the fabricators. PB- 160 is the chart for preceding three years including assessment year under appeal to show that assessee has been making payment of fabrication charges in earlier year as well. In assessment year under appeal, the average rate of fabrication charges have increased and the average rate of sale have also increased substantially. Therefore, there is nothing unusual in the business of assessee to incur fabrication charges. The A.O. has not rejected the books of account of the assessee and no specific defects have been pointed out in maintenance of the books of account. No addition has been made by the A.O. for violation of any TDS provisions. The details of expenses at PB-19 shows that the expenses are essentially incurred on fabrication charges, consumption of indigenous consumable stores, import of components and spare parts and cleaning and forwarding and freight. Thus, for earning income, assessee shall have to incur expenses on fabrication charges. In the absence of any specific defect pointed-out in the maintenance of the books of account, there were no justification for the A.O. to disallow the entire amount of fabrication charges. The assessee has given a certificate in the paper book that all the documentary evidences were filed before A.O, which have not been rebutted through any evidence or material on record by the Revenue. The Ld. CIT(A) also verified the details and the books of account and came to the finding that the assessee has maintained proper books of account and that there are no violation of TDS provisions. The Ld. CIT(A) on proper appreciation of facts and verification of the record and the books of account produced by the assessee, correctly deleted the addition. Therefore, there is no justification to restore back the matter in issue to the file of the Ld. CIT(A) for fresh examination as is argued by the Ld. D.R. We have also noted above that there is no reason for invoking Rule 46A in the matter. Therefore, no further interference is required in the matter. Ground No.2 of appeal of Revenue is dismissed.ö

8. Since the facts of the instant case are identical to the facts of the case decided by the Tribunal in assessee's own case for AY 2012-13, therefore, respectfully following the decision of the Tribunal in assessee's own case, we set aside the order of the CIT(A) and direct the AO to delete the addition. The ground raised by the assessee is accordingly allowed.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 14th February, 2022.

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 14th February, 2022.

dk

Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi