IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'A', NEW DELHI

BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. KULDIP SINGH, JUDICIAL MEMBER

(THROUGH VIDEO CONFERENCING)

ITA No. 5224/Del/2017
(Assessment Year : 2014-15)

DCIT Circle – 3(2), New Delhi PAN No. AAKCS 7367 K	Vs.	M/s. Attire Designers Pvt. Ltd., 886A/46, Ward No.6, Mehrauli, New Delhi
(APPELLANT)		**(RESPONDENT)**

Assessee by	Shri Akshat Jain, Adv.
Revenue by	Shri Satpal Gulati, CIT-D.R.

Date of hearing:	17.11.2021
Date of Pronouncement:	29.11.2021

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the Revenue is directed against the order dated 08.05.2017 of the Commissioner of Income Tax (Appeals) – I, New Delhi relating to Assessment Year 2014-15.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a company stated to be engaged in the business of manufacturing, trading and export of readymade garments. Assessee filed its return of income for A.Y. 2014-15 on 19.11.2014 declaring income of Rs.4,04,35,560/- under the normal provision of tax and book profits of Rs.4,01,64,390/- under MAT. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 14.12.2016 and the total taxable income was determined at Rs.34,24,39,329/-. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 08.05.2017 in Appeal No.491/16-17 allowed the appeal of the assessee. Aggrieved by the order of CIT(A), Revenue is now in appeal and has raised the following grounds:

1. *"On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting addition of Rs.29,26,42,600/- made by AO u/s 68 of the Act on account of unexplained sundry creditors.*

2. *The Ld. CIT(A) has erred on facts and in law in deleting the disallowance of Rs.93,59,041/- made by AO u/s 37(1) of the Income Tax Act, 1961 by relying on the decision of Hon'ble Delhi High Court in CIT vs. Enchante Jewellery Limited [2013] 40 Taxmann.com 216 (Delhi) when the facts of the case are different.*

3. *The appellant craves leave for reserving the right to amend, modify, alter add or forego any ground(s) of appeal at any time before or during the hearing of this appeal."*

4. **1st Ground** is with respect to deletion of addition made u/s 68 of the Act.

5. During the course of assessment proceedings, AO noted that assessee had made purchases from various related as well as non-related parties. To verify the genuineness of purchases, notice u/s 133(6) of the Act was issued to related party namely M/s. Mangal Superfine Garments Pvt. Ltd. and M/s. Vikas Superfine Garments Pvt. Ltd. On the basis of information received in response to notice u/s 133(6) of the Act, AO concluded that the financials of those companies did not support the worthiness of those companies to enter into the transaction of the scale entered with the assessee. He also concluded that profit of those companies did not support a huge turnover. He therefore treated the balance outstanding as on 31.03.2014 of Mangal Superfine Garments Pvt. Ltd. amounting to Rs.6,19,38,205/- and Rs.23,07,04,395/- of Vikas Superfine Garments Pvt. Ltd as unexplained and thus made aggregate addition of Rs.29,26,42,600/-.

6. Aggrieved by the order of AO, assessee carried the matter before CIT(A). Before CIT(A), assessee made detailed submissions. CIT(A) after considering the submissions made by the assessee and for the reasons stated in the order, deleted the addition.

7. Aggrieved by the order of CIT(A), Revenue is now in appeal.

8. Before us, Ld DR took us through the order of AO and supported his order. Ld AR on the other hand reiterated the

submissions made before the lower authorities and further pointed to the submissions made which are incorporated in the order of CIT(A). He thus supported the order of CIT(A).

9. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to deletion of addition made u/s 68 of the Act. AO had considered the outstanding balance at the yearend appearing against two related party as being unexplained and made its addition. When the matter was carried before CIT(A), CIT(A) after considering the detailed submissions made by the Assessee and after considering the various case laws noted in his order, deleted the addition. While arriving at the conclusion to delete the addition, CIT(A) *inter alia* observed that since the purchases made by the assessee from these two creditors were accepted as genuine by the AO, therefore no addition of the outstanding balances could be made u/s 68 of the Act. CIT(A) has further given a finding that the allegation of the AO that the financial statement of the sundry creditors do not support the creditworthiness, is not based on proper appreciation of the facts more so for the reason that the sundry creditors had purchased goods during the year under consideration from different parties and out of those goods purchased it had made sale to the assessee which was as per general business practice. He has also given a finding that the allegation of the AO that M/s. Mandal Superfine Garments Pvt. Ltd. and M/s. Vikas Superfine Garments

Pvt. Ltd. do not have creditworthiness to enter into large transaction of sale and purchase is factually incorrect. He has also noted that the transactions of purchases made by the assessee from its sister concern was at Arm's Length Price and no adverse finding has been brought on record by the AO and the AO has never doubted the purchases made by assessee from those associated concern. Before us, no fallacy in the findings of CIT(A) has been pointed out by the Revenue. In such a situation, we find no reason the interfere with the order of CIT(A) and **thus the Ground of Revenue is dismissed.**

10. **Ground No.2** is with respect to deleting the disallowance of Rs.93,59,041/- made u/s 37(1) of the Act.

11. During the course of assessment proceedings, AO noticed that assessee had claimed interest on Government dues amounting to Rs.93,61,171/-. Assessee submitted that it was with respect to the interest charged by the DGFT for the period upto 10.07.2014. It was further submitted that it was paid on the basis of demand raised by the Custom Authorities on account of the excess availment of export incentives and that the interest paid to the Custom authorities was not penal in nature. The submissions of the assessee were not found acceptable to AO. AO was of the view that assessee had obtained the benefit of duty credit scrips on the basis of the erroneous declaration. He was of the view that payment was in the nature of penalty imposed by

Custom authorities and was not allowable in view of explanation to Section 37 of the Act. He accordingly disallowed the interest payment of Rs.93,61,171/-.

12. Aggrieved by the order of AO, assessee carried the matter before CIT(A). CIT(A) while deciding the issue in favour of the assessee noted that assessee had received incentive of Rs.1,68,00,331/- from Custom Department Authority on export of "Technical Textile". However later on Deputy DGFT informed the assessee to refund the incentive received as certain exports did not fall in technical textile category for which the incentives were given. He has noted that in the letter directing the assessee to refund the incentive, nowhere it was stated that assessee had committed any offence under foreign trade regulation. He thereafter relying on the decision of Hon'ble Delhi High Court in the case of **CIT vs. Enchante Jewellery Ltd [2013] 40 taxmann.com 216 (Delhi)** held the interest expenses to be allowable expenses and directed the AO to delete the addition. Aggrieved by the order of CIT(A), Revenue is now in appeal.

13. Before us, Learned DR took us to the observations of AO and submitted that benefit was obtained on the basis of the erroneous declaration and therefore the Custom Authority directed to pay the interest which is penal in nature. He thus supported the order of AO.

14. Learned AR on the other hand reiterated the submissions made before the lower authorities and further submitted that assessee is engaged in business of manufacturing, trading and export of readymade garments. For the exports undertaken by the assessee, it had received incentives from the Govt. and during the year under consideration assessee had received incentives amounting to Rs.86.20 crores which it had offered as income. He submitted that during the year, Deputy DGFT had written a letter to the assessee wherein it was stated that assessee obtained benefit of Rs.1,68,00,331/- under 'focus product segment' for the exports shipment effected between 27.08.2009 to 31.03.2011 but those exports were not having the attributes of technical textile and therefore Rs.1,68,00,331/- amount equivalent to the duty scrips was recoverable to assessee. Assessee had refunded the aforesaid amount and on the aforesaid amount interest @15% calculated up to 10.07.2014 amounting to Rs.93,59,041/- was asked to be paid by the assessee which assessee had paid. He submitted that interest on Government dues have been paid to the Custom Authorities on the basis demand raised and it was not penal in nature. He submitted that amount of export incentives refunded was on account of difference of opinion raised before Deputy DGFT regarding the policy conditions and benefits availed and the observation of the AO about the erroneous declaration is misplaced. He submitted that DGFT has specifically stated that since assessee had deposited the entire amount without interest therefore assessee was liable to pay interest

@15%. He therefore submitted that interest is compensatory in nature and not penal in nature. He thus supported the order of CIT(A).

15. We have heard the rival submissions and perused the materials available on record. The issue in the present ground is with respect to the claim of interest expenses u/s 37 of the Act. It is the case of the Revenue that the interest paid by the assessee is penal in nature and therefore Explanation to Section 37 of the Act gets triggered and therefore the amount is not allowable. We find that CIT(A) while deciding the issue in favour of the assessee has given a finding that Deputy DGFT vide letter dated 24.04.2013 had asked the assessee to refund the incentive received earlier along with interest and the letter nowhere mentioned that assessee had committed any offence under Foreign Trade Regulation. CIT(A) while deleting the addition ahd also placed reliance on the decision rendered by Hon'ble Delhi High Court in the case of **Enchante Jewellery Ltd. (supra).** Before us, no material has been placed by Revenue to point out that interest paid by the assessee was on account of any act of assessee which is prohibited by law. Further Revenue has not placed any material on record to demonstrate that the payment is hit by Explanation 37 of the Act. Before us, Revenue has also not placed any contrary binding decision in its support not has pointed any fallacy in the findings of CIT(A). In such a situation,

we find no reason to interfere with the order of CIT(A) and **thus the ground of Revenue is dismissed.**

16. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 29.11.2021

Sd/-	**Sd/-**
(KULDIP SINGH)	**(ANIL CHATURVEDI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Date:- 29.11.2021

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI