

ITA No.69/Del/2006
ITA No. 1538/Del/2008
A.Y. 1997-98
M/s Ganesh Roller Flour Mills
Muzaffarnagar.

assessment order was, however, set aside u/s 263 of the Act. The A.O. was directed to make fresh assessment on the issue of claim of loss of Rs.13,14,612.91 incurred by the assessee firm, on trading in certain commodities like paddy, cotton etc. through the following concerns.

S.No.	Name of the firm	Loss (in Rs.)
1.	M/s Garg Enterprises	7,42,631.78
2.	M/s Chandu Lal Mohan Lal	1,50,506.00
3.	M/s Sita Ram Sher Singh	1,85,233.08
4.	M/s Mahalaxmi Cotton P.Ltd.	1,99,038.74
5.	M/s Radha Kishan Brikbhan	67,203.00
		=====
	Total:	<u>Rs. 13,44,612.91</u>

The A.O. completed the assessment u/s 143(3) r.w.s. 263 of the Act on 25.3.2003 determining the total income at Rs.14,32,410/-.

2.1. On appeal the Ld.CIT(A), Muzaffarnagar granted relief only to the extent of Rs.67,203/- being loss suffered from trading of cotton bales with M/s Radha Kishan Brikbhan. The balance addition was confirmed. Aggrieved the assessee filed the present appeal before me.

3. I have heard Shri SVM Chaurasia, the Ld.Counsel for the assessee and Shri T.Vasanthan, Ld.Sr.D.R. on behalf of the Revenue. On a careful consideration of the facts and circumstances of the case, perusal of material on record, orders of lower authorities, case laws cited, I hold as follows.

4. The Ld.Counsel for the assessee Shri S.V.M.Chaurasia submitted that:

(a) detailed submissions were made with documentary evidences in the form of purchase and sale vouchers, confirmatory letters from the respective concerns, their audited balance sheet and affidavits, in support of the genuineness of the transactions as well as the genuineness of the parties with whom the assessee had entered into transactions. The Ld.CIT(A) did not consider the written submissions and documentary evidences filed by the assessee for establishing the genuineness of the transactions and passed an order where he has confirmed the loss suffered in trading in goods with four parties namely:

1. M/s Garg Enterprises
2. M/s Chandu Lal Mohan Lal
3. M/s Sita Ram Sher Singh
4. M/s Mahalaxmi Cotton P.Ltd.

(b) that the assessee firm has been dealing in cotton and other commodities and the income/loss from such trading has been the subject matter of assessment in the earlier years.

(c) the AO had conducted detailed investigation and examined the persons connected with these firms on oath. The statement recorded by the AO when read with the documentary evidences prove the transactions.

5. The Ld.D.R. relied on the orders of the authorities below and rebutted the submissions of the assessee.

6. I first take up the issue of disallowance of loss party-wise.

6.1. Disallowance of loss of Rs.7,42,631.78 of M/s Garg Enterprises:- The reasons given by the A.O. for disallowing the loss and the assessee's reply are as follows.

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i	Reasons given by AO	Reply of the Assessee
1.	3 registered letter sent in 2000 and 2003 not served returned back with remark that no such firm exists	Firm is closed in 1999. hence registered letters returned back in 2000 & 2003 with remarks no such firm exists is not such a fact on the basis of which it could be held that firm was non-existent.
2.	8 traders in and around Sanatan Dharam Wali Gali denied the existence of firm.	The Inspector made enquiries in 2000 and firm was closed in 1999. name of the traders be informed and opportunity to cross examination be allowed.
3.	Expenses on account of salary, rent, telephone. etc stated by Sh Surender Kumar Joshi to have been incurred are not properly shown in balance sheet and also address not mentioned in audit report.	As per certificate of Excise and Taxation Officer, Ward 2. Bhatinda dated 27-1-2003. it is clear that during the FY 1996-97 firm was in existence and if expenses are not debited properly no inference can be drawn that the firm was not in existence.
4.	Production of books	Same were in the possession of Sh Prahlad Singh Prop of the firm and address being available on the file, the Ld AO was requested that Sh Prahlad Singh be summoned. A request was also made by Sh Surender Kumar Joshi in his written submissions copy filed.
5.	Cancellation of Registration by Excise & Taxation Officer on 4-6-1997	During FY 1996-97 registration was in existence is evident from the letter itself. /
6.	Name and address of purchaser and sellers not stated in the statement	These details can be submitted from the books of accounts which are in the possession of Sh Prahlad Singh. Proprietor of the firm which may please be summoned or time be allowed to us for producing the books.

1.

6.2. The assessee had produced the following documents before the A.O. as well as the Ld.CIT(A).

- i. Sales & purchase of cotton bales issued by M/s. Garg Enterprises.
- ii. Confirmatory letter of Sh Surinder Kumar, Manager of M/s Garg Enterprises confirming that the assessee firm suffered loss in purchase & sale of cotton bales.
- iii. Affidavit of Sh Surinder Kumar affirming that M/s. Garg Enterprises made purchases & sale of cotton bales on behalf of the assessee firm.
- iv. Statement of Sh Surinder Kumar, recorded on 2-3-2003.
- v. Statement of Sh Surinder Kumar recorded on 17-2-2003.
- vi. Copy of certificate dated 27-3-2000 of Excise and Taxation Officer, Bhatinda, stating that registration certificate issued to M/s. Garg Enterprises was cancelled on 1.4.1995 and the said concern was dealing in cotton seeds

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and cotton oil.

- vii. Statement of Sh Surinder Kumar recorded on 25-2-2003.
- viii. Statement on audited account as on 31-3-1995 of M/s. Garg Enterprises along with tax audit report in Form 3CD.
- ix. Copy of certificate dated 10-2-2003 issued by Excise and Taxation Officer, Bhatinda.
- x. Report of Income Tax Inspector regarding address of the firm.
- xi. Letter dated 25-2-2003 written to the ITO by Sh Surinder Kumar, Manager, M/s. Garg Enterprises.

6.3. A perusal of the above documentary evidences take me to a conclusion that the assessee has demonstrated the genuineness of the transaction. The enquiry itself was taken up by the revenue authorities many years after the transaction took place.

6.4. In my view, the claim of loss of Rs.7,42,631.78 incurred by the assessee in purchase and sale of cotton bales through M/s Garg Enterprises has to be allowed.

7. The second issue is regarding allowability of loss of Rs.1,50,506.00 in respect of transactions with M/s Chandulal Mohan Lal.

7.1. The A.O. disallowed the loss for the following reasons.

- i. Only one current account was admitted by Sh. Som Prakash which was opened on 10.4.1998 while the sale of paddy took place in February, 1997.
- ii. Sh.Devi Dayal, Partner of M/s Panmeshwari Das Ghanshyam Das to whom paddy was sold stated in his statement that he never saw Sh. Som Prakash or heard his name.
- iii. The purchase consideration of Rs.7,95,040/- paid for purchase of paddy has not been credited in the account of M/s Ram Kumar Vijendra Kumar.
- iv. The account books were not produced either by M/s Chandu Lal Mohan Lal or M/s Ram Kumar Vijendra Kumar on the common ground that they have been lost.

7.2. The assessee submitted as follows.

(i) Shri Som Prakash Prop M/s. Chandu Lal Mohan Lal in his statement recorded on 29-1-2003 (que no. 20) admitted that draft was received from the assessee firm which was deposited in the bank. The assessee firm has obtained copy of the bank account of M/s. Chandu Lal Mohan Lal from UCO Bank bearing account no. 892 wherein the draft of Rs. 150,506/- was credited on 19-3-1997. It is therefore, clear that the statement of Sh Som Prakash recorded on 29-1-2003 wherein he has stated that he has no other bank account except ale no. 600079 opened on 10-4-1998 was not correct and might have been given under some confusion.

(ii) The statement of Sh Devi Dayal, Partner of M/s. Panmeshwari Das Ghanshyam Das that he never saw Sh Som Prakash or heard his name is not acceptable as he was not a partner in the said firm during the period relevant to the AY 1997-98. Moreover, M/s. Panmeshwari Das Ghanshyam Das has filed copy of account of M/s. Chandu Lal Mohan Lal wherein sales made to the firm by M/s. Chandu Lal Mohan Lal are recorded and cheque of Rs. 2,20,139.75 and Rs. 3,58,416.46 was paid to M/s. Chandu Lal Mohan Lal. These facts clearly prove that M/s. Panmeshwari Das Ghanshyam Das purchased paddy from M/s. Chandu Lal Mohan Lal and accordingly the statement given by Sh Devi Dayal on this point is not correct.

(iii) M/s. Ram Kumar Vijendra Kumar is a proprietary concern of Sh Ram Kumar who is father of Sh Som Prakash Prop. M/s. Chandu Lal Mohan l.al. Both the concerns are running their business from the same premises. It is therefore, possible that payments made might have been adjusted by other transactions. Photocopies of purchase bills were given to the Income Tax Inspector in 2000 when he visited there to make enquiries and are part of the record.

(iv). Non production of books of accounts cannot be made the basis for disallowing the loss. M/s. Chandu Lal Mohan Lal has filed the vouchers in respect of purchase and sale of paddy and M/s. Panmeshwari Das

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Ghanshyam Das which has purchased the paddy from M/s. Chandu Lal Mohan Lal has produced the books of accounts before the AO.

7.3. The assessee produced the following documentary evidences before the authorities.

1. Sales & Purchase vouchers
2. Confirmation letter
3. Copy of order passed by Excise & Taxation Officer for FY 1996-97
4. Copy of affidavit dated 29-3-2000
5. Copy of statement recorded on 3-3-2001
6. Copy of Form 49A of Sh Som Prakash
7. Copy of Sales Tax registration certificate
8. Copy of statement recorded on 29-1-2003
9. Copy of telephone directory of Vyapar Mandal, Fatehabad.
10. Copy of FIR reg. loss of account books
11. Copy of newspaper reg loss of account books
12. Copy of certificate of Market Committee, Fatehabad.
13. Copy of receipt of license renewal fee
14. Copy of donation receipt
15. Copy of bill of purchase of account book
16. Copy of ID of Sh Som Prakash issued by Election Commission of India
17. Statement of Sh Ram Kumar Prop M/s. Ram Kumar Vijendra Kumar from whom M/s. Chandu Lal Mohan Lal purchased the paddy on behalf of assessee
18. Statement of Sh Devi Dayal, Partner of M/s. Panmeshwari Dass Ghanshyam Dass to whom M/s. Chandu Lal Mohan Lal sold the paddy on behalf of the assessee
19. Copy of voucher issued by Sh Ram Kumar Virendra Kumar to M/s. Chandu Lal Mohan Lal
20. Copy of accounts of M/s. Chandu Lal Mohan Lal in the books of MI5. Panmeshwari Dass Ghanshyam Dass and other papers supporting of entries in the copy of accounts

21. Copy of sales bill issued by M/s. Chandu Lal Mohan Lal to M/s. Panmeshwari Dass Ghanshyam Dass in respect of 1088 bags amounting to Rs. 6,52,148/-.

7.4. On perusal of the same, I am of the considered opinion that the loss of Rs.1,50,506.00 has to be allowed, as the assessee has demonstrated the genuineness of the same.

8. Loss of Rs.1,85,233.08 in the case of M/s Sita Ram Sher Singh; and
Loss in the case of M/s Mahalaxmi Cotton P.Ltd. of Rs.1,99,038.74:-

8.1. The A.O. disallowed the above loss on the following grounds.

i. M/s. Sita Ram Sher Singh purchased cotton bales on 21-3-1997 for Rs.11,94,363.60 and sold on 24-3-1997 for Rs. 10,09,029.52 to sister concern M/s. Mahalaxmi Cotton Pvt Ltd.

ii. On 21-3-1997 only a sum of Rs. 3,439.70 was the credit balance in the bank of M/s. Sita Ram Sher Singh. This small amount in the bank account could not have satisfied the purchase of Rs. 11,94,363.60.

iii. The sale consideration of Rs. 5,00,000/- vide cheque no. 023784 dated 17-3-1997 against sale of conodales was credited on the same day i.e. 17-3-1997 four days before the purchase of cotton bales on 21-3-1997. The payment for purchase of cotton bales was claimed to be made by M/s. Sita Ram Sher Singh on 21-3-1997, but the cheques issued in the month of October and November, 1997 relevant AY 1998-99.

iv. Mr Girdhari lal, Partner of M/s. Sita Ram Sher Singh stated in his affidavit dated 30-3-2000 that loss of Rs. 1,89,333.08 was received through account payee cheque no. 820212 dated 31-3-1997. However, in the above account the amount was credited by cheque no. 949687 instead of cheque no. 820212.

v. Similarly, in the case of M/s. Mahalaxmi Cotton Pvt Ltd the loss of Rs.1,99,038.94 was stated to have been received through account payee

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cheque no. 820213 whereas in the bank account the loss was credited through cheque no. 949788.

vi. In the case of M/s. Mahalaxmi Cotton Pvt Ud the cotton bales were purchased on 27-2-1997 and 3-3-1997 for Rs. 7,67,871.36 and Rs.7,45,441.42 respectively. On both these dated only a sum of Rs. 3,826.15 was lying credited in the bank account of the company.

vii. Both parties did not produce books of accounts on the ground that these have been lost.

8.2. The assessee submitted as follows.

i. That payment for the purchases made by M/s. Sita Ram Sher Singh for us was made by them in subsequent year it is not sufficient to hold the transaction as not genuine as one can purchase the goods on credit and sell on cash basis.

ii. That cheque nos 820212 and 820213 are the number of cheques which was issued in favour of our bank, Union Bank of India for obtaining draft of Rs. 1,85,233.83 in favour of M/s. Sita Ram Sher Singh and Rs 1,99,038.94 in favour of M/s. Mahalaxmi Cotton Pvt Ltd. A certificated of bank in this regard was filed before the AO.

iii. That purchase made by M/s. Mahalaxmi Cotton Pvt LT d amounting to Rs.7,67,871.36 and Rs. 7,45,441.42 on 29-2-1997 and 3-3-1997 with no balance in bank does not affect the genuineness of the transaction.

iv. That M/s. Sita Ram Sher Singh and M/s. Mahalaxmi Cotton Pvt Ltd are sister concerns so transfer entries in each other's bank account and cash withdrawals does not affect the genuineness of purchase or sales as amount deposited in bank is to be withdrawn from bank as no interest is received in current account.

v. Sh Shiv Kumar, is Partner in M/s. Sita Ram Sher Singh and Director in M/s. Mahalaxmi Cotton Pvt Ltd. He along with books of account appeared before the le! AO and requested that books be examined but the Ld AO denied to examine on the following grounds:

a. In the statement recorded by Income Tax Inspector on 4-3-2001 it was

stated that account books have been lost.

- b. That summon sent by Ld AO has not been complied with.
- c. That books which were to be produced might have been fabricated.

In this regard it is submitted that books stated to be lost/misplaced in 2001 were available in 2003 and if summon were not complied the onus was shifted on the assessee to produce both the parties so appellant tried and requested both the parties hence they were present on the request of the assessee as a witness of the assessee. Refusal of Ld AO to entertain both the parties is against the law and principle of natural justice and so addition made by the Ld AO is not maintainable. He has not even scrutinized the details submitted by assessee.

During the course of assessment proceedings before the AO and appellate proceedings before Ld CIT(A) documentary evidences were filed in support of the fact that the loss claimed in respect of both the parties were genuine. These documents are available at paper book page numbers 92-122 and 160-240.

8.3. A perusal of the above submissions lead me to a conclusion that the loss claimed should be allowed, though there are certain deficiencies on the part of the assessee. The deficiencies are not such that the assessee's claim could be disallowed. Hence I direct that (i) Loss of Rs.1,85,233.08 in the case of M/s Sita Ram Sher Singh;(ii) Loss in the case of M/s Mahalaxmi Cotton P.Ltd. of Rs.1,99,038.74, be allowed.

8.4. In the result the loss claimed by the assessee to the extent disallowed by the A.O. and confirmed by the Ld.CIT(A) is hereby directed to be allowed.

9. In the result the appeal of the assessee is allowed.

10. ITA 1538/Del/2008: As we have deleted the quantum addition, I hold that the penalty has no legs to stand. In the result the penalty is cancelled and the appeal is allowed.

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11. In the result both the appeals filed by the assessee are allowed.

Order pronounced in the Open Court on 15th February, 2016.

Sd/-
(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: the 15th February, 2016

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Copy of the Order forwarded to:

1. Appellant;
2. Respondent;
3. CIT;
4. CIT(A);
5. DR;
6. Guard File

By Order

Asst. Registrar