

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES 'CAMP AT MEERUT'**

**BEFORE SHRI N. S. SAINI, ACCOUNTANT MEMBER AND
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.3454/DEL/2017
Assessment Year 2013-14**

M/s. Shahnawaj Quereshi, M/s. GMC International, H. No.123, Pocket A, Samar Garden, Fathoullapur Road, Meerut.	Vs	Asst. CIT, Circle-2, Meerut.
(Appellant)		(Respondent)

Appellant by :	Shri Rajiv Singhal, Adv. & Shri Ramit Kakkar, Adv.
Respondent by :	Shri S.S. Rana, CIT & Shri Yogesh Sharma, Sr.D.R.

सुनवाई का तारख/Date of Hearing : 08/01/2019

घोषणा का तारख/Date of Pronouncement: 31/01/2019

ORDER

PER N.S. SAINI, A. M.

This is an appeal filed by the Assessee against the impugned order of learned CIT(A), Meerut dated 24.03.2017 for the Assessment Year 2013-14. The sole ground of appeal taken by the assessee in this appeal reads as under.

"1. The Ld. CIT(A) has erred in sustaining disallowance of alleged bogus purchase of Rs.5,20,15,994/-. Observation made, inferences drawn and findings recorded are against the facts and circumstances of the case."

2. The Assessing Officer observed in his order that assessee has made purchase of raw meat from 15 parties as under.

"1. Mohd. Chand	Rs.18,90,000/-
2. Mohd. Ashraf	Rs.18,90,000/-
3. Babu Ji Aaftab	Rs. 19,04,000/-
4. Raju s/o Kalava	Rs.18,90,000/-
5. Irfan Qureshi	Rs. 26,25,000/-
6. Aijaj Ahmad	Rs.18,90,000/-
7. Shahin	Rs.18,90,000/-
8. Mohd. Mansoor	Rs.18,90,000/-
9. Mohd. Nazim	Rs.18,20,000/-
10. Mohd. Yasin	Rs.14,27,744/-
11. Mohd. Sazid	Rs.1,04,79,000/-
12. Mohd. Rais	Rs.1,78,64,000/-
13. Mohd. Deedar	Rs.18,48,000/-
14. Sufiyan	Rs.14,85,000/-
15. Valil Urf Wakiluddin	Rs.12,23,250/-
<i>Total</i>	<i>Rs.5,20,15,994/-"</i>

3. The Assessing Officer observed that the assessee filed affidavit of the above 15 parties. The Assessing Officer observed that 6 parties to whom summons issued u/s. 131 of the Act were served upon, but they did not appear before him for recording their statements, they are as under.

"(i) Mohd Nazim s/o Mohd. Kasim	ID Given 1820000/-
(ii) Babu Ji s/o Sh. Mohd. Saddique	No Id 1904000/-
(iii) Irfan Quereshi s/o Sh. Saeed Quereshi	No Id 2625000/-
(iv) Mohd Ashraf s/o shri Abdul Majid	ID given 1890000/-
(v) Chand s/o Sh. Aizaz Ahmad	ID given 1890000/-
(vi) Raju s/o Sh. Kalwa	1890000/-"

3.1 The Assessing Officer further observed that in the following cases, summons issued under section 131 were received back unserved.

S. No.	Name of Party	ID	Transaction amount	Remarks
01	Sh. Shahin s/o Sh. Bundu	Blurred ID	Rs.1890000	"Bar Bar Talash Karne par pata nahi chala ath vapas.
02	Mohd. Mansoor S/o Sh. Abid Ali	No ID	Rs.1890000	"Kafi talash kiya par koi pata nahi chala

				<i>kath vapas"</i>
3.	<i>Mohd. Rais</i>	<i>No ID</i>	<i>Rs.17864000</i>	<i>"Kafi talash kiya par koi pata nahi chala ath vapas.</i>

3.2 He also observed that the assessee failed to produce the parties for recording their statement.

3.3 The Assessing Officer has also observed in his order that assessee produced books of account along with self made bills and vouchers for verification and on verification several discrepancies were found. For the above parties not a single bill was signed by the seller, all were self made and assessee failed to provide even a single documentary evidence to prove that all purchases were made from these parties which fact was accepted by the counsel of the assessee as well as accountant of the assessee vide order entry dated 28.02.2016. Considering the facts, a detailed show cause was issued to the assessee as to why purchase from these parties should not be treated as bogus and added to the income of the assessee. In reply to the show cause notice, the assessee submitted that the assessee was very old in this line of business with vast experience. All the suppliers are real meat suppliers. As per trend in this line of business weighment slips are enclosed with the purchase vouchers and bills with identified transactions are genuine as they are supported with weighment slips. All suppliers had given affidavit as proof of genuineness of transactions. It was submitted that the suppliers collected old and useless buffaloes from farmers and get them slaughtered and supplied raw meat. This is normal business and no amount is outstanding for payment to the suppliers. They were paid during the same financial year. In number of cases payments have been made through banking channel. It was submitted that the

company took possession of the goods at Mudra Cold Storage at Garh Road, Meerut and assessee has not paid any transportation charges, therefore, all the purchases are genuine and established as without purchases there cannot be any sale. The assessee has made payment to parties in cash instalments of Rs.20,000/- and recorded the same in his books of account. All the parties have confirmed the same. As they might have faced such type of atmosphere first time, and therefore, felt pressure and by mistake gave misstatements. They have given an affidavit which is a proof of genuineness of transactions. None of the parties are bogus. It was further submitted that the assessee has taken CC limit from Punjab national Bank E.K Road, Meerut in financial year 2012-13. Bank official has certified that they visited on monthly basis to check the stock and book debts and creditors reports and no material difference was noticed by them at that time and till date there is no inspection irregularity of branch outstanding regarding the assessee's account.

3.4 The Assessing Officer observed that the reply of the assessee is not acceptable as the same is without any substance. Mere submission of affidavit could not prove genuineness of transaction. Even in business of procuring cattle from farmers, no one gave cattle to buyers on credit basis. It is not possible for above parties to procure cattle on consecutive days for large number of cattles. It is out of imagination that a person who neither carried out this business in past and nor after these transactions and only for 3 to 4 days in a year and for only single party M/s. GMC International, clearly proves that these parties are bogus and created for introducing bogus purchases in order to reduce the profit of assessee's business. During the assessment proceedings, one party, Raju s/o Kalava attended before him in compliance of summons u/s 131 of the Act and his statement was

recorded on oath. The said party admitted that neither he knows the assessee nor he was involved ever in any business transaction with the assessee. He further stated that the assessee was involved in business of labour of marble implementation and was never involved in sale/purchase of raw meat. He also stated that he has not given any affidavit which was filed by the assessee dated 20.02.2016. The party admitted that photo ID, i.e., voter ID card given by the assessee is his own but neither he signed any affidavit nor he provided or given his ID to the assessee. From this, the Assessing Officer concluded that the assessee filed forged affidavit of the party and abused the proceedings under Income Tax Act. The assessee was show caused on 25.02.2016 for launching of prosecution under section 277 of the Income Tax Act, 1961. Assessee supplied copy of statement recorded along with ID provided by the party. The assessee was required to explain the same with supportive evidence and show caused why the same may not be applied for other affidavits filed by the assessee and case was fixed for hearing on 26.02.2016. On that day, assessee sent a request letter for adjournment and did not attend his office for next 4 days. During this period, Mr Raju s/o Shri Kalava attended before him and informed that assessee is pressuring him to change his statement and also filed written submission regarding affidavit which the assessing officer has quoted in his order, therefore, the assessing officer in view of the non cooperative behaviour of the assessee issued notice u/s 144 of the Income Tax Act on 02.03.2016 which was served through Notice Server as well as e-mail, to make compliance on 04.03.2016. On 04.03.2016, assessee along with his counsel attended before the Assessing Officer and filed written submission wherein assessee was asked to identify the parties whose affidavit was filed before him, he denied for the same and replied that all these parties are known by the accountant only which clearly shows uncertainty on

the part of the assessee too, therefore, he held that the affidavits filed by the assessee cannot be relied upon and are forged one, and therefore, the purchases checked and examined were found bogus and added Rs.5,20,15,994/- to the income of the assessee as bogus purchases.

4. On appeal, Id. CIT(A) rejected the appeal of the assessee. He observed that the principal argument of the Authorised Representative of the assessee was that without purchases there could be no export sale which has not been questioned by the Assessing Officer. He observed that the Assessing Officer has not disallowed the entire purchases. The total purchases were Rs.45.19 crores and Assessing Officer has disallowed only Rs.5.20 crore worth of purchases after verification from 16 parties.

4.1 He further observed that another argument of the Authorised Representative was that as a measure of practice in trade, which has all long been accepted by the Department also, the persons from whom the assessee purchases are generally petty traders who operated very crudely and who are generally not required to maintain any account. It is well known fact that they are small time operators from minority community majority of whom are mostly illiterate and are very hesitant to come to Income Tax Department as they hold them in fear. The vouchers are self made which the Assessing Officer has very summarily disbelieved. However, this was the trade practice which has been followed all along and is customary to the trade which has been accepted by the Department all these years, as has also been held by the Jurisdictional High Court in the case of Nisar Bidi Sikka No.1 v/s. CIT 174 taxmann 51 (Allid). The Id. CIT(A) observed that the AR of the assessee has made a generalized statement but

after detailed and specific exercise of verification of parties which the Assessing Officer has done in a painstaking manner it has been brought on record that these 16 parties which the Assessing Officer verified and checked during the assessment proceedings, the purchases made from these parties by the assessee run into lacs of rupees in each case and in two cases they are into crores. Thus, the whole argument of trade practice, small traders etc. is completely baseless and carries no weight. He further observed that the decision of Hon'ble Allahabad High Court in the case of Nisar Bidi Sikka (supra) is in complete contrast in fact with the facts of the present case. In that case the Assessing Officer rejected books of account drawing adverse inference from payments made to illiterate labourers whereas in the present case the books of account have not been rejected at all by the Assessing Officer as a matter of fact in the oral argument of the AR has argued that by accepting sale of the assessee and by not rejecting the books, the Assessing Officer has not made out case for proper addition. He observed that from the audit report submitted by the assessee in column 9(b) with regard to maintenance of books of account it has been stated by the auditor that assessee maintains only cash book, ledger, sales and purchase bills, expenses vouchers only. He observed that it is not understood that when the assessee is trading in meat why he could not maintain a quantity based stock register which could have made the argument of the Id. AR more appropriate. Despite dealing in raw meat and making purchases in kilograms and selling in kilograms no stock register has been maintained. The persons from whom purchases whose value is in lacs and crores have been made and these persons do not have any proper sale bill to offer as evidence. Accordingly filing their ledger accounts in the books of account of assessee or in some cases affidavit or certain credentials like PAN does not rescue the assessee's case as there is no

independent reliable evidence that could substantiate the purchase transactions from each of the parties. He observed that the only evidence which the Authorised Representative claimed to be reliable is a dharam kanta receipt. He observed that if dharam kanta receipt was reliable evidence then why is it that a person purchasing and selling raw meat could not maintain the stock register. In this case, quantity purchased is raw meat and the same is sold as such. So, when there is no value addition in the product and the purchase and sale in kilograms, in such circumstances, it is very easy to maintain quantitative stock tally or a stock register. Had assessee maintained proper stock register or quantitative stock tally and had he been able to relate the stock values with the dharm kanta receipts he would have had a very good case for proper purchase verification. In absence of quantitative stock tally the random use of dharm kanta receipts really did not help the assessee's case of providing credible evidence and proving that purchase are genuine. In absence of quantitative stock tally no case is made out by the counsel of assessee with regard to his argument that purchase could not be disallowed without disturbing the sales. He further observed that the argument of the Authorised Representative of assessee to compare gross profit rate with other such concerns is of little evidentiary value in so far as the Assessing Officer has not rejected the books of account and has only disallowed purchase after verification of bills of certain parties.

4.2 The other argument of the AR was that certain purchases disallowed, the assessee has made payments through Bank. The Id. CIT(A) observed that the auditor in his report has stated that the payments in excess of Rs. 20,000/- were made by cheque or draft. However, it is not possible for him to verify whether the payments in excess of Rs. 20,000/- have been made otherwise than by a crossed

cheque/bank draft, since the necessary evidence was not in possession of the assessee. Further, the Id. CIT(A) observed that certain payments were made by cheque will not hold any ground when auditor is qualifying that there is no evidence in the possession of assessee that could establish that these payments were made by cross account payee cheque or bank draft that could have formed some kind of independent reliable evidence. In appeal proceedings, AR did not lead any such evidence that could have been procured from the assessee's bank that could establish the genuineness of the purchases by verification of payments from the bank at least to the extent of cheque payments made. The AR despite making arguments and relying upon the plethora of case laws, which in any case are distinguishable on facts, could not rebut the findings of the Assessing Officer with regard to disallowance of purchases done. Hence, he confirmed the order of the Assessing Officer.

5. We have heard the rival submissions and perused the orders of the lower authorities and material available on record. The assessee is engaged in the business of export of meat. During the course of assessment proceedings, the Assessing Officer issued notice u/s 131 of the Act to 15 persons from whom the assessee claimed to have made purchases of meat. Out of 15 notices, 3 notices returned unserved and out of balance 12 notices only one noticee responded. In response to that notice Sh. Raju S/o Sh. Kalwa appeared and in his statement he denied making of any sale to the assessee. The payments to all these parties were made in cash. From this, the Assessing Officer inferred that aggregate purchase of Rs.5,20,15,994/- made from these 15 parties were bogus and he, therefore, added the same to the income of the assessee.

6. On appeal, the CIT(A) confirmed the action of the Assessing Officer.

7. Before us, the AR of the assessee explained that the assessee for its export of meat was required to purchase raw meat. Mostly, the suppliers of raw meat are illiterate and small persons. They purchase useless live stock from farmers and get the same butchered and thereafter supplied the same to the assessee. Out of the fear of Income Tax Department, they may not have responded to the notice of the Income Tax Department.

8. He, further, submitted that for disallowance of Rs.5,20,15,994/-, the income of the assessee was assessed at Rs.5,30,73,994/- which on the background of turnover of the assessee of Rs.43,01,72,740/- works out to 12.33% of the turnover. He argued that it was not practically possible to achieve such huge profit percentage. He placed before us the following comparable cases wherein for the assessment year 2013-14, the assessed income and turnover and profit percentage are as under:

<i>Name of the assessee</i>	<i>Turnover</i>	<i>Income assessed</i>	<i>Net income percentage</i>	<i>Assessed u/s</i>
<i>Mohd Mehraj</i>	<i>1,01,53,78,273</i>	<i>12,45,190</i>	<i>0.122</i>	<i>----</i>
<i>Al-Sad Trading Co. (Firm Partnership)</i>	<i>67,14,70,744</i>	<i>6,23,890</i>	<i>0.09</i>	<i>143(3)</i>
<i>Mohd Nawazuddhin Hazi</i>	<i>1,82,52,436</i>	<i>8,96,561</i>	<i>0.49</i>	<i>143(3)</i>

9. We find that it is not in dispute that the purchases of the assessee are not fully verifiable. In these circumstances, the book result of the assessee is not reliable and therefore, the lower authorities were justified in rejecting the book result of the assessee. However, keeping in view the above comparable cases which were assessed by the department, it is equally difficult to sustain the assessment made by the revenue.

10. The DR could not dispute the fact that the above named persons were engaged in same line of business in which the assessee was engaged in. Therefore, going by the percentage of income assessed in their case ranging from 0.12% to 0.49%, it cannot be believed without cogent material that the assessee could have earned income of 12.33% of its turnover. We, therefore, set aside the orders of the lower authorities. We find that the highest rate of net profit assessed in comparable case for the year under consideration is 0.49% of the turnover. Therefore, in order to considered opinion it shall be fair and in the interest of justice that the Assessing Officer is directed to take assessee's net income at 0.49% of its turnover. We, accordingly, direct the Assessing Officer to recompute the assessee's income. Thus, this ground of appeal of the assessee is partly allowed.

11. In the result, the appeal of the assessee is partly allowed.

(Order Pronounced in the Open Court on 31/01/2019)

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Dated: 31/01/2019

Prabhat Kumar Kesarwani, Sr.P.S.

Copy forwarded to:

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

Sd/-
(N. S. SAINI)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR