

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' NEW DELHI
BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

I.T.A. No.6324/Del/2015
Assessment Year: 2011-12

M/s Garg Dall & Besan Mills, vs **Income-tax Officer,**
C-37, Lawrence Road Indl. Area, **Ward 25(2), New Delhi.**
Delhi.
(PAN: AAAFG0126B)

I.T.A. No.6486/Del/2015
Assessment Year: 2011-12

Income-tax Officer, vs **M/s Garg Dall & Besan Mills**
Ward 25(2), New Delhi. **C-37, Lawrence Road Indl. Area,**
New Delhi.
(PAN: AAAFG0126B)
(Appellant) **(Respondent)**

Assessee by: Shri Satish Aggarwal, CA
Department by: Ms Ashima Neb, Sr. DR

Date of hearing: 29.01.2019
Date of Pronouncement: 06.02.2019

ORDER

PER K. NARASIMHA CHARY, JM

Aggrieved by the order dated 30.09.2015 for the Assessment Year 2011-12 passed by the learned Commissioner of Income-tax (Appeals)-14, New Delhi {for short "Id. CIT(A)"}, both the assessee and revenue preferred ITA No.6324/Del/2015 & ITA No.6486/Del/2015 respectively.

2. Brief facts of the case are that the assessee is a partnership concern. They are engaged in the business of manufacturing of gram dall, trading of gram and various dalls and such food grains. For the Asstt. year 2011-12, they have filed their return of income on 24.9.2011 showing an income of Rs.9,13,346/-. Learned AO recorded that there was a mismatch in the quantity of gram purchased and processed gram and dall sold by the assessee during the year. Learned AO made an addition of Rs.91,40,034/- to the income of the assessee on the ground that there is a net processing loss over and above the permissible loss of 2.5% and calculated the gram that should have been available with the assessee at 3363 quintals which the assessee claimed to be the process loss. Secondly, learned AO made an addition of Rs.41,19,600/- on the ground that the shortage of 2.5% of the process loss resulted in 3433 quintals of chain sold as cattle feed at Rs.1200/- per quintal out of books. Thirdly, learned AO made an addition of Rs.29,94,000/- on the ground that the assessee supplied 97298 quintals of processed gram to HPSCSCL and as per agreement 2.5% was allowed loss during the processing of chana and it amounted to 2495 quintals @ Rs.1200 per quintal. Lastly, according to the learned AO, the assessee received a sum of Rs.6,76,34,577/- as Processing and Packaging Transportation Charges, whereas the assessee submitted only 10 bills amounting to Rs.5,58,09,000/-. As such the sum had to be added back to the income of the assessee. While doing so, the learned AO assessed the income of the assessee at Rs.2,89,92,560/- by way of order dated 28.3.2014 u/s 143(3) of the Act.

3. In the appeal preferred by the assessee, learned CIT(A) estimated the process loss at 4% as against 6.12% claimed by the assessee and 2.5% allowed by the AO and on this premise, he restricted the addition of

Rs.91,40,034/- made on account of percentage of processing loss to Rs.33,11,679/-. Both, revenue and assessee, challenged this finding. Revenue challenged the estimate of 4% of loss as against 2.5% estimated by the AO whereas the assessee challenged the same stating that the Ld. CIT(A) should have been accepted at 6.12% claimed by the assessee.

4. Learned CIT(A) deleted the addition of Rs.41,19,600/- and Rs.29,94,000/- on the ground that there was no evidence for the assumptions made by the learned AO that there was a by-product equivalent to the quantum of process loss accepted by the learned AO. Lastly, learned CIT(A) deleted the addition of Rs.1,18,25,575/- on the ground that the learned AO is not justified in making such an addition without sharing the details obtained by him from HPSCSCL and without affording an opportunity to the assessee to explain the same. Revenue challenged the deletion of Rs.1,18,25,577/- also.

5. What, therefore, effectively needs to be adjudicated in this appeal is the addition of Rs.91,40,034/- made by the learned AO by taking the processing loss at 2.5% and also the addition of Rs.1,18,25,577/- on account of the undisclosed processing receipts by the assessee.

6. It is the argument of the learned AR that in so far as the addition of Rs.91,40,034/- is concerned, learned AO had wrongly rejected the Comprehensive Industry Document On Pulse, Wheat, Rice Mills prepared by the Central Pollution Control Board, Ministry of Environment and Forests, Government of India clearly indicating that the normal processing loss in gram dall industry is between 5 and 9%, on the ground that the same cannot be taken as authentic evidence as it is a mere study by a person or group of persons. Learned CIT(A) also found fault with the learned AO on this aspect.

7. Learned DR submitted that the assessee's agreement with HPSCSCL clearly indicates that the Corporation will provide 100 kgs. Black grams to the assessee at the warehouse of PEC Ltd. or any other central Government agency at Mumbai and recover 97.5 kg black gram in one kg. packet, which clearly indicates that the net loss is to the maximum of 2.5%. She submitted that on the face of the agreement between these parties, it is not open for the assessee to claim the processing loss at any percentage more than 2.5% and the learned AO is, therefore, justified in rejecting the document furnished by the assessee and making the addition on a scientific basis.

8. We have gone through the orders of the authorities below. Learned CIT(A) has rightly observed that the tender is only a financial document and any terms thereof have the legal consequences, but they do not control the process or stipulate the processing losses at any rate because the processing loss would depend upon several factors including the loss during the transport, shifting of the content from bag to bag, drying up of the wet gram, packing into the small bags of one kg, quality of grain and removal of stones, fungus and other foreign materials, as such, it is not fair on the part of the learned AO to reject the document prepared by a Department of Govt. of India as a mere study by someone or some group of persons. On this aspect, we are in agreement with the learned CIT(A) that merely because there is a stipulation in the tender document that the contractor had accepted to deliver the processed dall with 2.5% loss. Further, it is a matter of record that the assessee corresponded with the Corporation complaining against the quality of gram. As all these aspects have a bearing on the loss, we do not find any justification in the learned AO to refer to the tender document to assume that the maximum processing loss is only 2.5% and to estimate the remaining as the sale out of books.

9. Even on the aspect of quantification of the processing loss by learned CIT(A), having noted that the normal processing loss in gram dall industry is between 5 to 9% as per the document prepared by the Department of Govt. of India, learned CIT(A) estimated the loss at 4% without referring to the authenticity of source of this estimate. If for any reason, the learned CIT(A) did not agree with the learned AO on this aspect, learned CIT(A) should have taken a pragmatic view while estimating the processing loss. There is no reason for the learned CIT(A) to put the estimation at 4% as against the normal loss in gram dall industry between 5 to 9% as per the norms of the Government of India. On this score, we are unable to agree with both the authorities below and the estimate of processing loss at 6.12% by the assessee is very much fitting within the parameters prescribed by the Department of Govt. of India and there is no material on record for us not to accept this recommendation and to subscribe to the view taken by the authorities below. In the absence of any clinching evidence to quantify the processing loss, we are of the considered opinion that it is very safe to stick to the norms prescribed by the Govt. of India and when the processing loss shown by the assessee is well within these parameters, we are inclined to accept the same. On this ground, we allow the grounds of appeal of the assessee and dismiss Ground No.1 of the revenue's appeal.

10. Now coming to Ground No.2 of revenue's appeal, record speaks that learned AO based his conclusions on the information furnished by HPSCSCL and while comparing the same with the bills and vouchers supplied by the assessee and without affording an opportunity to the assessee to explain the discrepancy, if any, found by the learned AO, learned AO straightaway proceeded to draw the inference and made the addition. As a matter of fact, learned CIT(A) also found fault with the procedure adopted by the

learned AO inasmuch as he observed that having called for the details from HPSCSCL regarding the transactions with the assessee, it is not fair on the part of the AO to make an addition basing on the total of few bills, the copies of which were submitted as sample evidence to the AO.

11. Further, learned CIT(A) observed in unequivocal terms that notwithstanding the fact that the details obtained by the learned AO from HPSCSCL were not furnished to the assessee, the assessee furnished the copy of the party in their books, offered explanations which were totally ignored and disregarded by the learned AO; and that the assessee gave copies of the accounts of the parties in their books to the AO on 7.3.2014 and had the learned AO had gone through that account, he would have found that there was no deference at all and all the amounts mentioned in the assessment order were duly accounted by the assessee.

12. Learned CIT(A) further found from the record that a reconciliation chart showing the amount mentioned in the assessment order and the assessee's books have been submitted along with all documents that were furnished to the AO. On a perusal of all these documents, which were made available to the learned AO, learned CIT(A) reached a conclusion that the addition needs to be deleted on two counts, namely, because the learned AO did not share the information obtained by him from the HPSCSCL behind the back of the assessee and secondly because even otherwise the accounts and reconciliation chart along with explanation submitted by the assessee before the learned AO do not justify the addition. This is a matter of record.

13. It is not the case of the Revenue that any new evidences were produced before the Ld. CIT(A) for the first time in the appeal and no details of such documents were furnished. When the learned CIT(A) relied upon

the documents that were submitted before the learned AO and in the context of learned AO not going through the record and making the addition without proper appreciation of the facts, we find it difficult to agree with the learned DR that the learned CIT(A) should have called for the remand report from the learned AO or should have adopted any other enquiry whatsoever. It is not a case where any document is produced before the CIT(A) for the first time. Learned CIT(A) solely based on the documents which were available with the learned AO. It is only the reappraisal of the evidence on record, learned CIT(A) reached a right conclusion and it is not vitiated on any ground. We, therefore, do not find any reason to interfere with the order of learned CIT(A) on this count. Ground No.2 of the revenue's appeal also deserves to be dismissed and is accordingly dismissed.

14. In the result, appeal of the assessee is allowed and the appeal of the revenue is dismissed.

Order pronounced in the Open Court on 6th February, 2019.

Sd/-

sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER
Dated: 6th February, 2019.

(K. NARASIMHA CHARY)
JUDICIAL MEMBER

‘VJ’

Copy forwarded to:

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

Asstt. Registrar, ITAT

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