

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.4689/Del/2015
Assessment Year: 2010-11**

M/s Bishan Saroop Ram Kishan Agro vs ACIT, Circle 5(1),
P. Ltd., New Delhi.
5584, First Floor, Naya Bazar,
Delhi.
PAN: AAACB9686J.

**ITA No.4862/Del/2015
Assessment Year: 2010-11**

ACIT, Circle 5(1), vs M/s Bishan Saroop Ram
New Delhi. Kishan Agro P. Ltd.,
5584, First Floor, Naya Bazar,
Delhi.
PAN: AAACB9686J
Appellant Respondent

**Assessee by Shri Ved Jain, Advocate
Shri Ashish, Advocate
Revenue by Smt. Sushma Singh, CIT DR**

**Date of Hearing 20.3.2019
Date of Pronouncement 28 .3.2019**

ORDER

PER K. NARASIMHA CHARY, JM

These are crossed appeals filed both by assessee and the Revenue challenging the order dated 31.3.2015 in Appeal No.332/14-15 passed by

the Learned Commissioner of Income-tax (Appeals)-2, New Delhi {"CIT(A)"} for Assessment Year 2010-11.

2. Brief facts of the case are that the assessee is a company engaged in the business of manufacturing and trading including export of rice and plastic products. For the Asstt. Year 2010-11, they have filed their return on 15.10.2010 declaring an income of Rs.1,80,11,900/-. Learned AO, however by order dated 30.3.2013 u/s 143(3) of the Income-tax Act, 1961 ("the Act") assessed the income of the assessee at Rs.14,35,36,000/- by making additions including Rs.4,18,26,767/- on account of loss in the plastic division, Rs.7.46,12,000/- on account of trade discount, Rs.60,85,338/- on account of shortage of closing stock and Rs.30 lacs on account of shipping expenses.

3. Aggrieved by the said additions, assessee preferred an appeal before the Id. CIT(A). Learned CIT(A) by way of impugned order deleted the additions of Rs.4,18,26,767/-, Rs.7,46,12,000/- and Rs.60,85,338/- on account of loss in the plastic division, trade discount and shortage of closing stock respectively, but sustained the addition of Rs.30 lacs on account of payment of shipping expenses. Assessee, therefore, preferred ITA No.4689/Del/2015 challenging the sustaining of addition of Rs.30 lacs on account of shipping expenses whereas Revenue preferred ITA No.4862/Del/15 challenging the disallowance made by the Id. CIT(A) as enumerated above.

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4. First coming to the revenue's appeal, first ground is in respect of the addition on account of plastic division. It could be seen from the

order of assessment that during the assessment, learned AO sought the explanation from the assessee stating that the assessee company incurred a loss of Rs.4,18,26,767/- in the plastic division by showing the sales of Rs.45,64,60,012/- as against the expenditure of Rs.49,82,86,778/- and he based the said query on his observations that there was no plastic division of the assessee at all and even if it is there, such plastic division at Bangalore and Chennai are not holding excise and tax registration.

5. It was argued before the learned CIT(A) that prior to reaching to such conclusion as to the loss said to have been incurred by the assessee in the plastic division, learned AO did not give any show cause notice on this aspect. It was also further submitted before the Id. CIT(A) that it was submitted before the AO that the actual sales were Rs.50.02 crores against the expenditure of Rs.49.82 crores resulting in profit of Rs.19,50,399/-.

6. Assessee, in support of their contention, produced copies of the Excise Registration in respect of the Bangalore and Chennai branches, Excise return of plastic division of Chennai branch and copies of assessment under VAT. Impugned order speaks and for that matter, there is no dispute that learned CIT(A) sought remand report from the Id. AO. Learned AO commented that the electricity bill of Bangalore unit was of small amount and the bills are not in the name of the assessee. Except this, there was no serious dispute about the documentary evidence produced by the assessee.

7. Record further speaks that after preferring the appeal, the assessee approached the learned AO u/s 154 of the Act seeking rectification of the order on the ground that the learned AO had wrongly picked up the sales

figure of Rs.45.64 crores from the summary of stock statement and ignored the value of export target plus license benefits to the tune of Rs.4,37,77,166/- which includes the total sales. Learned AO instead of rectifying the factual mistake committed by him, passed an order stating that since the matter was prejudice before the learned CIT(A), no order could be passed by him.

8. On a careful perusal of the material before us, we are, therefore, satisfied that there was a factual mistake committed by the AO in not taking into consideration the details about the plastic division as per the tax audit report filed by the assessee in Form 3CD, the audited annual accounts which were duly certified by the CA and downloaded by them from the portal of the Ministry of Corporate Affairs which were prepared after conducting inspection of assessee's record available with the Registrar of Companies whereas the details of the plastic division were given in Schedule XVIII of the balance sheet. It is further clear that learned AO should have rectified the factual mistake committed by him in taking up the wrong figures of sales, namely, in the place of Rs.50,02,37,179/-, he had taken Rs.45,64,60,012/- and thereby arrive at a loss of Rs.4,18,26,767/- instead of finding the profit of Rs.19,50,401/-. The factual error committed by the ld. AO is rectified by the learned CIT(A) by looking into the record and on that aspect the Revenue should not have any grievance. This ground of appeal is devoid of merit and is accordingly dismissed.

9. Ground No.2 of revenue's appeal is in respect of the addition on account of trade discount allowed to the customers. In so far as this amount is concerned, there is no dispute that an amount of Rs.7,46,12,000/- had become irrecoverable. According to the assessee,

they treated as trade discount whereas according to the learned AO, it should be the bad debt allowable in the next year inasmuch as the agreement giving rise to the deficit in recovery had arisen on account of the agreement dated 20.4.2010. The genuineness of the transaction is not in dispute but only the accounting treatment for the purpose of tax is in dispute.

10. Learned DR submitted that if this amount is allowed in this year, it amounts to postponement of payment of tax to the next year which is not permissible in law and, therefore, such an amount has to be disallowed in this year and could be allowed in the next year as a written off of doubts.

11. Learned AR submitted that it is the contingencies occurred after the date of balance sheet and according to the accounting standards, this amount has to be taken cognizance in this year only. He submitted that according to the matching principles, such an amount is not likely to be allowed in the next year because the expenditure happened in this year and in the event of the settlement agreement occurred though subsequent to the date of the balance sheet but before the settlement of accounts. Lastly, he submitted that even otherwise, in his book, the assessee written off this amount and it is not for the Revenue to question the wisdom of the assessee in writing off in this year and genuineness of the recoverability cannot be questioned.

12. In so far as the relationship between M/s Mohsen Line General Trading, LLC and M/s Pearl Beach General Trading LLC, learned CIT(A) found that in view of the letter dated 1.8.2009 whereby M/s Mohsen Line General Trading, LLC had informed the assessee on two contracts dated 1.7.2009 in respect of supplies of 7000 MT to be effected

to their associate concern M/s Pearl Beach General Trading LLC of “MOHSEN” brand rice. Such a factual finding is not disputed in this appeal and in view of the fact that transaction took place in this year to crystallize after the date of balance sheet or before the settlement of accounts, the assessee rightly claimed the deduction of this amount in this year and it cannot be denied. We are in agreement with the submissions made on behalf of the assessee. On this premise, we do not find any reason to interfere with the findings of the learned CIT(A) and accordingly, dismiss this ground.

13. Now coming to the last ground relating to the shortage of stock, Learned CIT(A) recorded that the shortage of 1447.17 qtls works out to 0.0032% of sales made and according to the FCI norms 0.50% is the normal wastage. There cannot be any dispute that some shortage is bound to happen in transit, loading and unloading also. When the FCI accepts 0.50% as normal, we have to keep in mind that such a shortage was acceptable in a situation where there is no process involved. However, in the matter in hand, some process is involved. So, normally apart from the loading, unloading and transportation, the process losses should also be considered. However, in this matter, the shortage recorded is only 0.0032% and by no stretch of imagination, could we say that this is unacceptable. We do not find any irregularity or illegality in the findings of the learned CIT(A). With this, appeal of the revenue stands dismissed.

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14. Now coming to the assessee’s appeal, only point involved is the payment for shipping expenses. Record speaks that both the authorities

below consistently recorded that assessee failed to produce any evidence whatsoever before them to support the payment recorded by the learned CIT(A) and pleads that in view of some dispute as to the quantum of shipping charges, the payee did not issue any receipt to the assessee so as to produce before the authorities. According to the assessee, only a part payment of Rs.30 lacs was paid from time to time and since the payee did not issue receipts, they are unable to prove the same.

15. In these circumstances, it is prayed that since the payment is a verifiable fact with reference to the disallowance furnished by the assessee, it would be in the fitness of the things to remand the matter to the learned AO for verification of the same and to take a view. Learned DR does not dispute the verifiability of the expense.

16. In these circumstances, in respect of the fact as to whether or not a receipt is issued and whether the payment was made by the assessee as claimed by them, needs verification and such a verification could conveniently be done at the end of the AO. We, therefore, set aside this issue to the file of the AO for verification and to take a view. This ground of assessee's appeal is allowed for statistical purposes.

17. In the result, whereas appeal of the revenue is dismissed, assessee's appeal is allowed for statistical purposes.

Order pronounced in the Open Court on 28th March, 2019.

Sd/-

sd/-

**(N.K. BILLAIYA)
ACCOUNTANT MEMBER**

**(K. NARASIMHA CHARY)
JUDICIAL MEMBER**

Dated: 28th March, 2019/VJ

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

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