

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "A", NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

AND

SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

I.T.A. No. 5902/DEL/2015		
A.Y. : 2011-12		
ACIT, CIRCLE 50(1), NEW DELHI	VS.	M/s. S.S. BROTHERS, SF-3, 7A/42, WESTERN CHAMBERS, WEA, KAROL BAGH, NEW DELHI - 5 (PAN:AANFS2475A)
<b>(ASSESSEE)</b>		<b>(RESPONDENT)</b>

Revenue by : Smt. Naina Soin Kapil, Sr. DR.  
Assessee by : Shri R.K. Kapoor, FCA

**ORDER**

**PER H.S. SIDHU : JM**

The Revenue has filed this Appeal against the impugned Order of the Ld. CIT(A)-20, New Delhi relevant to assessment year 2011-12.

2. The grounds raised in the appeal read as under:-

- i) The Ld. CIT(A) has erred in deleting the addition of Rs. 50,12,111/- on account of variation in NP rate w.r.t. previous AY 2009-10 in which turnover and

nature of business /market condition was approximately the same. The Id. CIT(A) has erred in ignoring the various facts of the case that the assessee has inflated the direct cost including purchases and non maintenance of stock register etc.

- ii) The Ld. CIT(A) has erred in restricting the addition of Rs. 19,07,170/- to Rs. 5,00,000/- without appreciating the fact that the assessee did not produce proper bills and vouchers of the expenses during the assessment proceedings.
- iii) The Ld. CIT(A) has erred in deleting the addition of Rs. 7,76,710/- without considering the facts and circumstances of the case that the assessee failed to substantiate the bills / vouchers and prpose of travelling in this regard.

The appellant craves leave to add, alter or amend any / all the grounds of appeal before or during the course of hearing of the appeal.

3. The brief facts of the case are that assessee filed its return on 29.9.2011 declaring income at Rs. 70,14,670/-. The return of the

assessee was processed u/s. 143(1) of the Income Tax Act, 1961 (in short "Act"). Subsequently, the case was selected for scrutiny under Compulsory Selection. First notice u/s. 143(2) of the Act was issued on 25.9.2012 which was served upon the assessee within the stipulated statutory period. Further, notices u/s. 142(1) of the Act alongwith detailed questionnaires were issued and served on the assessee. In response to the same, the AR of the assessee attended the assessment proceedings from time to time and requisite information has been filed. Assessee is a firm and engaged in the business of traders of raw and frozen meat an export of frozen buffalo meat business. The firm comprising three partners i.e. Sh. Mohd. Saleem Qureshi, Mohd. Shakir Qureshi and M/s Al Nasir Export Private Limited having profit sharing ratio of 60%, 30% and 10% respectively. The assessee was asked to submit comparative chart of GP /NP ratio for the current assessment year and the previous assessment years. The assessee submitted the chart for the assessment year 2009-10 to 2011-12. During the year under consideration, the assessee has shown net profit of Rs. 5,73,93,097/- on gross receipts of Rs. 1,22,24,66,182/- thereby showing net profit rate of 0.47%. The Assessee was required to explain the reason for low NP and GP shown by the assessee and in response to the same the assessee filed its reply, which was

considered by the AO but not acceptable. The AO observed that even during the Assessment year 2009-10, when the turnover of the assessee was comparable with the current AY assessee was showing the ratio of total direct expenses with respect to turnover to the tune of 91.86% against 95.98% during the AY 2011-12. Hence, 0.41% of the total turnover was disallowed on account of excess unexplained direct expenses claimed by the assessee and addition of Rs. 50,12,111/- was added. Further, the AO made the addition of Rs. 19,02,170/- being 10% of expenses on account of unexplained expenses for none maintenance of proper bill and vouchers. AO further observed that though the assessee had produced the bills of inland travelling totaling to Rs. 26,86,642/-. The business activities of the assessee are concentrated in the surrounding areas of Delhi. But the bills of domestic travel were to several places. But the purpose of the so called business visits could not be explained by the assessee. No purpose or proof of foreign travelling expenses of Rs. 4,20,200/- could be furnished by the assessee. Therefore, in order to prevent leakage of revenue on account of personal usage,  $\frac{1}{4}$  of the said expenses i.e. Rs. 7,76,710/- was disallowed and added back to the income of the assessee u/s. 37(1) of the Act. Accordingly, the AO completed the assessment at Rs. 1,49,45,660/- u/s. 143(3) of the Act vide order

dated 30.4.2014. Against the assessment order dated 30.04.2014, assessee filed an appeal before the Ld. CIT(A), who vide his impugned order dated 27.08.2015 has deleted the part additions. Aggrieved with the order of the Ld. CIT(A), New Delhi the Revenue is in appeal before the Tribunal.

4. Ld. Sr. DR relied upon the Order of the AO and reiterated the contentions raised in the grounds of appeal. She stated that even during the Assessment year 2009-10, when the turnover of the assessee was comparable with the current AY assessee was showing the ratio of total direct expenses with respect to turnover to the tune of 91.86% against 95.98% during the AY 2011-12. Hence, 0.41% of the total turnover was rightly disallowed on account of excess unexplained direct expenses claimed by the assessee and addition of Rs. 50,12,111/- was added. She further stated that with regard to addition of Rs. 19,02,170/- being 10% of expenses on account of unexplained expenses, this was made due to non maintenance of proper bill and vouchers. As regards addition out of travelling expenses is concerned, she stated that though the assessee had produced the bills of inland travelling totaling to Rs. 26,86,642/-. The business activities of the assessee are concentrated in the surrounding areas of Delhi. But the bills of domestic travel were to several places. But the purpose of the so

called business visits could not be explained by the assessee. No purpose or proof of foreign travelling expenses of Rs. 4,20,200/- could be furnished by the assessee. Therefore, in order to prevent leakage of revenue on account of personal usage, ¼ of the said expenses i.e., Rs. 7,76,710/- was rightly disallowed and added back to the income of the assessee u/s. 37(1) of the Act by the AO.

5. On the other hand, Ld. Counsel for the assessee has relied upon the order of the Ld. CIT(A) and in support of his contention, he filed the Synopsis in the case, which read as under:-

*"This is an appeal filed by the Department against the Order of the learned CIT(A) granting a relief to the assessee on certain additions made by the Assessing Officer.*

*Our ground-wise submissions on each of the ground of assessee raised are as under:*

*GROUND NO. 1 - RELIEF OF RS.50,12,111/- ON ACCOUNT OF ADDITION MADE DUE TO ALLEGED LOW GP RATE :*

*The Assessing Officer has discussed this issue at Pages 1 to 6 of his Order. The assessee was required to submit the Comparative Chart of GP/NP for the year under consideration as compared to previous two assessment years. This was accordingly submitted as noted by the Assessing*

*Officer at top of Page-2. The GP rate of the assessee during the year under consideration was 11.16% as compared to 11.39% with the immediate preceding Assessment Year and @ 11.57% with Assessment Year 2009-10. Since there was a reduction in the GP rate by 0.41% as compared to the Assessment Year 2009- 10, the Assessing Officer required the assessee to explain the reasons for drop in the GP rate although the drop in GP rate was not very substantial as compared to the earlier years.*

*The assessee amongst others explained that the sales composition during the year under consideration was different in as much as the assessee had to make substantial purchase of frozen meat as against the raw meat in the earlier years for meeting its export commitments, therefore there was slight drop in the GP rate.*

*The Assessing Officer further noticed that the major difference occurred at the stage of direct expenses which includes purchases. The Assessing Officer noticed in Para-4, Page-4 of his Order that ratio of direct expenses as compared to turnover in Assessment Year 2009-10 was 91.86% and during the year under consideration it was 95.98%. This variation of increased direct cost was attributed towards purchase of frozen meat from one related concern by the Assessing Officer. The Assessing*

*Officer further alleged that Stock Register is not maintained by the assessee. The Assessing Officer further noticed that purchase of raw material was @ Rs.82 to 85 per kilogram whereas the purchases from the related parties have been made at higher prices.*

*Thereafter, the Assessing Officer alleged the violation of provisions of section 40A(2)(b) and made the addition to the total income @ 0.41% of its turnover of the current year by comparing the GP rate of Assessment Year under consideration 2011-12 with Assessment Year 2009-10.*

*Before the learned CIT(A) all the contentions pertaining to this issue were explained. It was explained that there was a material change in the composition of products purchased and sold by the assessee during the year under consideration as compared with the preceding years. It was also explained that the purchase price of the products depends upon the demand and supply and at times raw material has to be purchased from known sources depending upon commitments of export orders. Further, complete quantitative details of raw material purchased and sold and produced during the year was provided with the contention that same was also available in the Tax Audit Report. No discrepancies whatsoever has been pointed out by the Assessing Officer and only an allegation has*

*been made that quantitative details stock register has not been kept. A copy of quantitative tally which reconciles with Tax Audit Report was also filed before AO & CIT(A) is also being filed as Annexure-1. It was also explained that entities from whom the purchase of frozen meat has been made by the assessee, which are sister concern, are also being assessed with the same Officer and they are being taxed at the same rate at which the assessee is being taxed and therefore no reason for the assessee to pay higher price to such parties. It was also explained that while making the addition, the Assessing Officer has considered freight outward as direct cost, which is wrong and should have been considered as indirect cost. If so done, the direct cost to turnover of the assessee during the year is 92.66% as against 93.56% in the Assessment Year 2009-10 and the difference is less than 1% as compared to the difference of more than 4% by the Assessing Officer in Para- 4, Page-4 of his Order.*

*The learned CIT(A) called for a Remand Report against all the submissions made by the assessee and he has reproduced Remand Report of the Assessing Officer although copy of such Remand Report was not provided to the assessee.*

*Amongst various submissions made by the assessee, certain legal proposition and case laws were also submitted with additions to the declared*

*income of the assessee cannot be made merely on the ground of low GP without bringing nothing more on record. Some of the case laws on this proposition are noted at Page-9 of CIT(A) Order.*

*After considering all the submissions of the assessee, Order of assessment as well as Remand Report of the Assessing Officer, the learned CIT(A) concluded the issue as per his judgement in Para 4.5, Page-13 of his Order. The learned CIT(A) has accepted that merely because there was some change in the direct cost as compared to the previous year, the addition cannot be made to the income of the assessee. The learned CIT(A) has also accepted the proposition that freight outward cannot be considered as direct cost as has been done by the Assessing Officer. When so done, the difference in the direct cost, which is one of the main reason for the Assessing Officer to make the addition, is not justified and therefore the addition has been deleted by the CIT(A).*

*Apart from the judgements, we wish to rely upon a judgement of Hon'ble Delhi High Court as reported in 326 ITR 223 in the case of CIT Vs. Smt. Poonam Rani wherein the Hon'ble High Court has held that the fall in gross profit ratio in the absence of any cogent reasons cannot be itself to be a ground to held that proper income of the assessee cannot be deduced from the accounts maintained*

by the assessee. Hon'ble High Court at Page 225 held as under:-

*"If the stock register was not maintained by the assessee that may put the Assessing Officer on guard against the falsity of the return made by the assessee and persuade him to carefully scrutinize the account books of the assessee. But the absence of one register alone did not amount to such a material as would lead to the conclusion that the account books were incomplete or inaccurate. Similarly, a low rate of gross profit, in the absence of any material pointing towards falsehood of the account books, could not by itself be a ground to reject the account books under section 145(3) of the Act. Whether fall in gross profit stood explained by the assessee or not was a question of fact. Both the Tribunal and the Commissioner (Appeals) having accepted the explanation given by the assessee and the finding of fact recorded by them having not been shown to be perverse in any manner, no substantial question of law arose to interfere with. "*

*A copy of said judgment is enclosed herewith for your honour's ready reference and records as Annexure-2.*

*It would be noted that in the said case, the Assessing Officer had even rejected the books of accounts maintained because the GP rate was 1.4% during the year as against 5.91% in the preceding year. When the facts of the assessee's case are compared with this judgement, the assessee's case stand on much stronger footing in as much as the drop in GP rate from the immediate preceding year is 0.23% which has been ignored by the Assessing Officer and the Assessing Officer has proceeded to compare the GP rate of Assessment Year 2009-10 where also the difference was only 0.41%. Moreover, books of accounts of the assessee have not been rejected by the Assessing Officer in assessee's case and he has merely disbelieved the explanation given by the assessee on conjecture and surmises.*

*Similarly, Hon'ble Rajasthan High Court in the case of Pr. CIT v. British Health Products India Ltd. as reported in (2017) TIOL-2296-HC- Rajasthan-IT has held that when there is decline in GP ratio and assessee furnishes no reasons for such decline still it is not a good case to make addition. A copy of this judgment of Hon'ble Rajasthan High Court is also enclosed as Annexure-3.*

*As against the aforesaid judgment of Hon'ble Rajasthan High Court, the facts of the assessee is much stronger as firstly, the decline in a GP ratio*

*was just 0.23% as compared to immediate preceding year and 0.41% as compared to year preceding the immediate year. Such difference was also wrongly calculated as pointed out earlier. Secondly, the assessee had explained the reasons for the decline in GP rate which has not been properly appreciated by the AO and addition has been made by the AO on surmises and conjectures, it is respectfully submitted. The order of the CIT(A) is on correct appreciation of facts and law is prayed to be upheld.*

*It is respectfully submitted that the Order of the CIT(A) granting the relief is based on appreciation of all the facts on record and the same may please be upheld especially in view of legal position of case laws given above.*

#### **GROUND NO. 2 - AD-HOC ADDITION OF 10% OF CERTAIN EXPENSES**

*The Assessing Officer has discussed this issue at Page-6 of his Order. The Assessing Officer observed that some of the expenses identified in the Order, the assessee failed to file the bills and vouchers. The Assessing Officer estimated 10% of such expenses towards leakage of possible revenue on account of non-maintenance of proper details etc. and made additions.*

*The learned CIT(A) observed that the Assessing Officer did not point out any specific*

details which the assessee has not produced. Comparative Chart of expenses incurred during the year under consideration as compared to earlier year was also submitted to claim that expenses on these heads were not higher as compared to earlier years. It was also submitted that no disallowance can be made without pointing out any specific defects in the books of accounts. The comparative expenses for A. Y. 2010-11 and 2011-12 are as under:-

<i>Particulars</i>	<i>AY 2010-11</i>		<i>AY 2011-12</i>	
	<i>Amount</i>	<i>Ratio to Sale</i>	<i>Amount</i>	<i>Ratio to Sale</i>
<i>Turnover (FOB)</i>	55,13,25,576.00		1,21,63,22,475.00	
<i>Travelling</i>	12,15,626.00	0.220%	31,06,842.00	0.255%
<i>General Expenses</i>	43,63,617.00	0.791%	25,00,000.00	0.206%
<i>Vehicle Running and</i>	21,43,051.00	0.389%	24,13,651.00	0.198%
<i>Maintenance</i>				
<i>Repair &amp; Maintenance exp.</i>	18,74,130.00	0.340%	15,31,490.00	0.126%
<i>Genset Running expenses</i>	1,00,86,000.00	1.829%	1,25,76,564.00	1.034%

It would be noticed that expenses of all the heads have reduced in any case are not abnormally higher which could trigger any adhoc disallowances as made by the Assessing Officer.

The learned CIT(A) after considering the submissions of the assessee, restricted the disallowance made by the Assessing Officer of Rs.5,00,000/- and granted the relief for the balance amount.

*It is submitted that the Order of the learned CIT(A) in restricting the disallowance to Rs.5,00,000/- which has been accepted by the assessee, is very reasonable especially when it is clear that expenses of these heads during the year under consideration are very much comparable rather less than as compared to the earlier years. The same is prayed to be upheld.*

**GROUND NO. 3 - DISALLOWANCE OF RS.7,76,710/-  
OUT OF TRAVELLING EXPENSES**

*The Assessing Officer has discussed this matter at Page-6 and 7 of his Order. The Assessing Officer has made the disallowance by observing that although the business of the assessee is centred around New Delhi area, the assessee has undertaken travel to certain other places including foreign travel. He therefore disallowed 25% of travelling expenses out of the total travel expenses incurred by the assessee during the year under consideration.*

*Before the CIT(A), detailed submissions were made as also reproduced in his Order. It was explained that the foreign travel expenses represent the travel undertaken by the assessee to those countries where exports takes place.*

*Total business of the assessee and sales are mainly export sales and foreign travelling incurred as observed by the Assessing Officer was only Rs.4,20,200/-. It was also explained that no defect has been pointed out by the Assessing Officer in its books and the addition has been made merely on conjecture and surmises.*

*The learned CIT(A) appreciating all these facts has deleted the addition, which is prayed to be upheld.*

*It is, therefore, prayed that the appeal of the Department may kindly be dismissed because the learned CIT(A) has granted relief after due appreciation of the facts and law on the issues involved.*

*Pray accordingly."*

6. We have heard both the parties and perused the records, especially the impugned order as well as the Synopsis filed by the Assessee's AR. We find that with regard to deletion of addition of Rs. 50,12,111/- on account of variation in NP rate is concerned, the assessee was required to submit the Comparative Chart of GP/NP for the year under consideration as compared to previous two assessment years. This was accordingly submitted as noted by the Assessing Officer at top of Page-2 of his order. The GP rate of the assessee during the year under consideration was 11.16% as compared to 11.39% with the immediate preceding Assessment Year and @ 11.57% with Assessment Year 2009-10. Since there was a reduction in the GP rate by 0.41% as compared to the Assessment Year 2009-10, the Assessing Officer required the assessee to explain the reasons for drop in the GP rate although the drop in GP rate was not very substantial as compared to the earlier years. The assessee amongst others explained that the sales composition during the year under consideration was different in as much as the assessee had to make substantial purchase of frozen meat as against the raw meat in the earlier years for meeting its export commitments, therefore there was slight drop in the GP rate. The Assessing Officer further noticed that the major difference occurred at the stage of direct expenses which includes purchases.

The Assessing Officer noted in Para-4, Page-4 of his Order that ratio of direct expenses as compared to turnover in Assessment Year 2009-10 was 91.86% and during the year under consideration it was 95.98%. This variation of increased direct cost was attributed towards purchase of frozen meat from one related concern by the Assessing Officer. The Assessing Officer further alleged that Stock Register is not maintained by the assessee. The Assessing Officer further noticed that purchase of raw material was @ Rs.82 to 85 per kilogram whereas the purchases from the related parties have been made at higher prices. Thereafter, the Assessing Officer alleged the violation of provisions of section 40A(2)(b) and made the addition to the total income @ 0.41% of its turnover of the current year by comparing the GP rate of Assessment Year under consideration 2011-12 with Assessment Year 2009-10. Before the learned CIT(A) all the contentions pertaining to this issue were explained. It was explained that there was a material change in the composition of products purchased and sold by the assessee during the year under consideration as compared with the preceding years. It was also explained that the purchase price of the products depends upon the demand and supply and at times raw material has to be purchased from known sources depending upon commitments of export orders. Further, complete quantitative details of raw material purchased and

sold and produced during the year was provided with the contention that same was also available in the Tax Audit Report. No discrepancies whatsoever has been pointed out by the Assessing Officer and only an allegation has been made that quantitative details stock register has not been kept. A copy of quantitative tally which reconciles with Tax Audit Report was also filed before AO & CIT(A). It was also explained that entities from whom the purchase of frozen meat has been made by the assessee, which are sister concern, are also being assessed with the same Officer and they are being taxed at the same rate at which the assessee is being taxed and therefore no reason for the assessee to pay higher price to such parties. It was also explained that while making the addition, the Assessing Officer has considered freight outward as direct cost, which is wrong and should have been considered as indirect cost. If so done, the direct cost to turnover of the assessee during the year is 92.66% as against 93.56% in the Assessment Year 2009-10 and the difference is less than 1% as compared to the difference of more than 4% by the Assessing Officer in Para- 4, Page-4 of his Order. The learned CIT(A) called for a Remand Report against all the submissions made by the assessee and he has reproduced Remand Report of the Assessing Officer although copy of such Remand Report was not provided to the assessee. Amongst various

submissions made by the assessee, certain legal proposition and case laws were also submitted with additions to the declared income of the assessee cannot be made merely on the ground of low GP without bringing nothing more on record. Some of the case laws on this proposition are noted at Page-9 of the Ld. CIT(A) Order. After considering all the submissions of the assessee, Order of assessment as well as Remand Report of the Assessing Officer, the learned CIT(A) concluded the issue as per his decision in Para 4.5, Page-13 of his Order and has accepted that merely because there was some change in the direct cost as compared to the previous year, the addition cannot be made to the income of the assessee. The learned CIT(A) has also accepted the proposition that freight outward cannot be considered as direct cost as has been done by the Assessing Officer. When so done, the difference in the direct cost, which is one of the main reason for the Assessing Officer to make the addition, is not justified and therefore the addition has rightly been deleted by the Ld. CIT(A), which does not need any interference on our part, hence, we uphold the action of the Ld. CIT(A) on the issue in dispute and reject the ground no. 1 raised by the Revenue.

6.1 As regards restricting the addition of Rs.19,07,170/- to Rs.5,00,000/- without appreciating the fact that the assessee did

not produce proper bills and vouchers of the expenses during the assessment proceedings. We find that the assessee firm is a big exporter of meat having a turnover of over Rs. 122 crore and several units have to run round the clock besides the product is perishable in nature and hence the entire facilities also have to run round the clock the assessee has also put forward its point that it has incurred less expenses on such items as compared to earlier years. The AO has not quantified the amount for which bills / vouchers were not produced but only disallowed 10% of the expenses claimed under the head on adhoc basis. Hence, on reasonable basis, the Ld. CIT(A) has restricted the disallowance to a lump sum of Rs. 5 lacs to cover such bills / vouchers not produced during assessment proceedings. The total disallowance on account of Gen Set running expenses, general expenses. Vehicle running and maintenances expenses and office repair and maintenance expenses and accordingly, the assessee's ground was partly allowed, which does not need any interference on our part, hence, we uphold action of the Ld. CIT(A) and reject the ground raised by the Revenue.

6.2 As regards ground relating to deletion of disallowance of Rs.7,76,710/- from travelling expenses is concerned, we find that assessee's firm being one of the leading meat exporter is required

to incur expenses on account of travels of its employees and partners both inland and abroad. The expenses claimed seem to be quite reasonable for a firm earning a turnover of over Rs. 122 crores. Therefore, the AO was not justified in disallowing 1/4<sup>th</sup> of such expenses without any valid reason. Therefore, the addition of Rs. 7,76,710/- on account of travelling expenses was rightly deleted by the Ld. CIT(A), which does not need any interference on our part, hence, we uphold the action of the Ld. CIT(A) on the issue in dispute and reject the ground raised by the revenue.

7. In the result, the Revenue's Appeal stands dismissed

Order pronounced on 07/05/2019.

Sd/-

Sd/-

**[PRASHANT MAHARISHI]  
ACCOUNTANT MEMBER**

**[H.S. SIDHU]  
JUDICIAL MEMBER**

*Date 07/05/2019*

**SRBHATNAGAR**

**Copy forwarded to: -**

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

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches