

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**

BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER

ITA No.4295/Del/2016
Assessment Year: 2012-13

Al Tabarak Frozen Foods P. Ltd., 258, Khaweshgyan Khurja Bulandshahr PAN No. AAECA8288M (APPELLANT)	Vs	DCIT Circle Bulandshahr Uttar Pradesh (RESPONDENT)
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Appellant by	Sh. Lalit Kumar Sharma, Advocate Sh. Ansh Kumar Sharma, CA
Respondent by	Shri S. L. Anuragi, Sr. DR

Date of hearing:	07/08/2019
Date of Pronouncement:	09/08/2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 25.05.2016 of the CIT(A), Ghaziabad relating to A. Y. 2012-13.

2. This appeal was earlier dismissed by the Tribunal for non appearance. Subsequently the Tribunal vide M. A. No.289/Del/2017 order dated 31.05.2019 recalled its earlier order. Hence this is a recalled matter.

3. The assessee in the various grounds of appeal has challenged the part relief granted by the CIT(A) out of the addition of Rs.2,06,780/- made by the Assessing Officer on account of sundry creditors and the addition of Rs.8,11,043/- out of packing /processing charges.

4. Facts of the case, in brief, are that the assessee company is engaged in the business of meat processing on job work basis as well as purchase and sale of buffalo and Buffalo meat in local market. It filed its return of income on 29.09.2012 declaring total income of Rs.17,55,830/-. The Assessing Officer during the course of assessment proceedings observed that the letter issued u/s. 133 (6) to one of the creditors namely M/s. Mintor Trading Engineers, Rampur of Rs.2,06,780/- was not received. Since assessee could not satisfactorily explain by furnishing any evidence, the Assessing Officer made addition of Rs.2,06,780/- to the total income of the assessee.

4.1 Similarly the Assessing Officer noted that assessee has claimed expenses of Rs.22,40,690/- on account of packing charges (labour) and an amount of Rs.58,69,740/- on account of processing charges (Labour). Since some of the vouchers were not properly maintained and element of expenses other than business cannot be ruled out, the Assessing Officer disallowed an amount of Rs.8,11,043/- being 10% of the above two expenses on ad-hoc basis on account of possible leakage of revenue.

5. In appeal the Ld. CIT(A) restricted the disallowance to 5% of the expenses. So far as the unconfirmed credit of Rs.2,06,780/- is concerned he did not accept the additional evidence filed before him and sustained the addition.

6. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

7. The ld. Counsel for the assessee filed the following chart to show the expenses incurred during the year as well as in the preceding assessment year which are as under :-

PARTICULARS	F/Y2011-12	F/Y 2010-11
Turnover (copy of Extract of ITR Form is attached_	9,6,35,435/- (pageNo. 15)	7,02,91,653/- (page No. 10)
Expenses (B) (Pg No.17)		
Processing Charges (Labour)	58,69,740/-	55,41,220/-
Packing Charges (Labour)	22,40,690/-	18,61,660/-
Total Expenses (Copy of Extract of Expenses Page is attached)	81,10,430/-	74,02,880/-
% of Expenses to Turnover	8,44%	10.53%

8. Referring to the copy of the order of the Tribunal in assessee's own case for A. Y.2010-11, he submitted that ad-hoc

disallowance on account of packing (Labour) charges was deleted by the Tribunal. So far as the addition on account of unconfirmed sundry creditor is concerned he submitted that the Ld. CIT(A) is not justified in rejecting the confirmation filed before him which could not be obtained during the course of assessment proceedings. He accordingly submitted that he has no objection if the matter is restored to the file of the Assessing Officer.

9. The Ld. DR on the other hand heavily relied on the order of the CIT(A).

10. I have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. I find the Assessing Officer made addition of Rs.2,06,780/- being the credit balance in the name of M/s. Mintor Trading Engineers, Rampur on the ground that notice u/s.133 (6) was returned unserved and the assessee could not substantiate with any evidence to his satisfaction regarding such credit balances. Similarly the Assessing Officer made ad-hoc addition of Rs.8,11,043/- being 10% of the expenses incurred on account of packing charges (Labour) and processing charges (Labour) on account of possible leakage of revenue since some of the vouchers were not properly maintained. I find the Ld. CIT(A) restricted the disallowance to 5% of such expenses and

confirmed the addition on account of un-substantiated creditor. It is the submission of the Ld. Counsel for the assessee that the Tribunal in the order for assessment year 2010-11 has deleted the ad-hoc disallowance of Rs.50,000/- on account of such processing charges and the confirmation given by the assessee on account of sundry creditor was rejected by the CIT(A) being additional evidences. It is also submission of the ld. Counsel for the assessee that the percentage of expenses to turnover is 8.44% for the impugned assessment year as against 10.53% in the preceding year. It is also his submission that he has no objection if the matter is restored to the file of the AO for fresh adjudication on both the issues.

11. Considering the totality of the facts of the case I agree with the request of the Ld. Counsel for the assessee that the matter may be restored to the file of the Assessing Officer for fresh adjudication. I, therefore, deem it proper to restore both the issues to the file of the Assessing Officer with a direction to give one final opportunity to the assessee to substantiate its case and decide the issue as per fact and law. I hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

12. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 09.08.2019.

Sd/-
(R.K PANDA)
ACCOUNTANT MEMBER

Neha

Date:- 09.08.2019

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	07.08.2019
Date on which the typed draft is placed before the dictating Member	07.08.2019
Date on which the approved draft comes to the Sr.PS/PS	07.08.2019
Date on which the fair order is placed before the Dictating Member for Pronouncement	07.08.2019
Date on which the fair order comes back to the Sr. PS/ PS	07.08.2019
Date on which the final order is uploaded on the website of ITAT	09.08.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	