

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AGRA BENCH: AGRA**

**BEFORE: SHRI LALIET KUMAR, JUDICIAL MEMBER AND  
DR. M. L. MEENA, ACCOUNTANT MEMBER**

**I.T.A No.263/Agra/2016  
(ASSESSMENT YEAR: 2011-12)**

ITO, 4(5), Agra.  <b>(Appellant)</b>	<b>Vs..</b>	M/s HMA Agro Industries Ltd., 2/220, 2 <sup>nd</sup> Floor, Glory Plaza, Agra. PAN:AACCH0450J <b>Respondent)</b>
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<b>Appellant by</b>	<b>Shri Waseem Arshad, Sr. DR.</b>
<b>Respondent by</b>	<b>Shri Deependra Mohan,CA.</b>

<b>Date of Hearing</b>	<b>01.08.2019</b>
<b>Date of Pronouncement</b>	<b>19.08.2019</b>

**ORDER**

**Per, Dr. M. L. MEENA, A. M.:**

This appeal has been filed by the Revenue against the order of the Id. Commissioner of Income Tax (Appeals)-2, Agra, dated 31.03.2016, for A.Y. 2011-12.

2. The revenue has raised the following grounds:

*“1. That the Ld. CIT(A)-II, Agra has erred in law and on facts in deleting the addition of Rs.93,44,424/- made by AO on account of unverifiable purchases without appreciating the fact that the assessee company could not furnish the bills, vouchers and addresses of the persons from whom purchases were made.*

*2. That the Ld. CIT(A)-II, Agra has erred in law and on facts in deleting the addition of Rs.93,44,424/- made by AO on*

*account of unverifiable purchases by relying upon the decision of Hon'ble Calcutta High court in the case of CIT Vs. CPL Tannery reported as 2009 318 ITR 179 (Cal) without appreciating the fact that the decision of Hon'ble Calcutta High Court pertains to the disallowance u/s 40A(3) of the Act.*

*3. That the Ld.CIT(A)-II, Agra has erred in law and on facts in deleting the addition of Rs.93,44,424/- made by AO on account of unverifiable purchases by observing that in subsequent year no such disallowance has been made, ignoring the fact that every assessment is separate assessment and the facts of the subsequent year's differ from the facts of the case under consideration.*

*4. That the order of Ld. Commissioner of Income Tax (Appeal)-II, Agra being erroneous in law and on facts deserves to be quashed and that the Assessing Officer deserves to be restored.”*

3. The sole issue is regarding deleting the addition of Rs.93,44,424/- against purchases made by the assessee company relying upon the decision of Hon'ble Calcutta High Court in the case of 'CIT vs. CPL Tannery', (2009) 318 ITR 179 (Cal.)

4. The assessee company is engaged in running slaughter house at Agra. During the course of assessment proceedings. The AO being not satisfied with the assessee's reply on purchases, he has disallowed 20% of assessee's purchases amounting to Rs.93,44,424/- holding as unverifiable purchases.

5. Being aggrieved with the assessment order, the assessee went in appeal before the ld. CIT(A) who had granted relief to the assessee relying on various judgments in specific decision of Hon'ble Calcutta High Court in the case of 'CIT vs. CPL Tannery', (supra) vide para 5.1 and 5.2 as follows:

*“5.1 Though the case laws relied upon by the Ld.AR are not applicable to the appellant’s case and they relate to additions made u/s 68 of the Act. However, it is observed that in the decision of Hon’ble Calcutta High Court as rendered in the case of CIT vs. CPL Tannery reported as (2009) 318 ITR 179 (cal), wherein the Hon’ble High Court has held as under-*

*“The contention of the assessee that he purchased goods from suppliers who are produces of hides and skin, has not been refuted either by the AO or by the CIT(A). The second contention of the assessee that owing to business expediency, obligation and exigency, the assessee had to make cash payment for purchase of goods so essential for carrying on of his business, was also not disputed by the AO. The genuinity of transactions, rate of gross profit or the fact that the bonafide of the assessee that payments are made to produces of hides and skin are also neither doubted nor disputed by the AO. On the basis of these facts it is not justified on the part of the AO to disallow 20% of the payments u/s 40A(3) in the process of assessment. We, therefore, delete the addition of Rs. 17,90,571/- and ground no. 1 is decided in favour of the assessee.”*

*5.2 Thus while considering the aforesaid decision of Hon’ble Calcutta High court even though it was rendered in the context of disallowance made u/s 40A(3), however the disallowance involved therein also pertained to the cash purchases, and while also considering the assessee’s claim, as made vide written submissions, I find there is a credence and force in it as in the subsequent year, on similar facts and circumstances, the AO while framing assessment u/s 143(3) in the assessee’s case for AY 2012-13, had accepted the purchases which too were made in cash and no addition on account of unverifiable nature*

*of purchases has been made by the AO. As regards the purchases made by the assessee during relevant period of AY 2012-13, there is no change and in the said year to the purchases have been made in cash and supported by self made vouchers. I also find force in the contentions of appellant that it is demand of the industry to purchase meet from the small butchers in cash and appellant has not made any advance payment, complete addresses have not been thought necessary. Since the AO has accepted part of the purchases made in cash supported by self made vouchers, there is no reason making disallowance 20% of purchases, as no pinpointing adverse finding was given by the AO, thus the disallowance so made remains to be in realm of assumptions and guess work. As observed, the case of the appellant is strengthened from the AO's own action that in the subsequent year no such disallowance has been made by him, particularly when there was no change in the facts of the case. Therefore, the disallowance made by the AO is without any basis and deserves to be deleted. Hence the disallowance of Rs.93,44,424/- is deleted. As a result, this ground of assessee is allowed."*

6. The Id. DR placed strong reliance on the assessment order. He contended that the Id. CIT(A) has deleted the addition of Rs.93,44,424/- which was made by the AO on account of unverifiable purchases. The CIT(A) has not appreciate the facts that assessee company could not furnish the bills, vouchers and addresses of the persons from whom purchases were made; and that the decision of the Hon'ble Calcutta High Court in the case of 'CIT vs. CPL Tannery', (supra) relied by him, pertains to disallowance u/s 40A(3) of the Act.

7. The Id. AR for the assessee contended that assessee is running a slaughter house where most of the purchases are made in cash and entire sales turnover is accepted by the AO; that in the VAT return the sales and purchases shown by the assessee has also been accepted by the VAT Department; that in the subsequent

years i.e., A.Y. 2012-13, 2013-14 and 2014-15, purchases shown by the assessee have been as such accepted by the AO. The AO observed that in some cases the addresses could not be furnished by the assessee him, but the AO has not mentioned the factum of the name of the persons and the volume of the purchase claimed in such cash vouchers. The counsel submitted that merely stating that in the absence of proper bills and addresses of sellers it is not open to verification is not sufficient material to proceed against the assessee without bringing specific documentary evidence on record to that effect. In support, the counsel has filed copy of VAT assessment order passed u/s 28(2) dated 16.1.2014 (APB page 1 to 2); ITR with computation of income for the assessment order under appeal (APB 3 to 4); tax audit report in Form 3CA with Form 3CD (APB page 5 to 13) and audited balance sheet in P & L account annexed with complete schedule for the assessment year 2011-12 page 14 to 28. The counsel for the assessee further contended that the sells effected consequent to purchase made during the year under consideration and that the closing stock was so remained has been accepted by the AO. Under these circumstances the question of doubted the purchased would not arise. Accordingly, he urged for acceptance of the book results in view of Hon'ble Calcutta High Court, in the case of 'CIT vs. CPL Tannery' (supra).

8. The ld. DR placed reliance on the assessment order.

9. Heard the rival contentions, perused the record and the decision of Hon'ble Calcutta High Court in the case of 'CIT vs. CPL Tannery', (supra).

10. It is undisputed fact on record that in the subsequent assessment years i.e., 2012-13, 2013-14 and 2014-15 the assessee's trading results inclusive of purchase, sales and closing stock have been accepted by the Department.

11. The Id. CIT(A) while considering the decision of Hon'ble Calcutta High Court in the case of 'CIT vs. CPL Tannery', (supra) though it was rendered on the disallowance made u/s 40A(3), however, such disallowance involved therein also pertain to the cash purchases. The Id. Counsel argument that the AO while framing assessment u/s 143(3) in assessee's own case, for A.Y. 2012-13 and following years had accepted the purchases which were too made in cash without calling for such addition by holding either unverifiable purchases, or unexplained purchases, conclusively established that the department has accepted the assessee's system of accounting, in respect of the purchases in cash by self made voucher considering the very nature of slaughter house Industry.

12. It is seen that in the nature of purchases made by the assessee during the year under consideration and that of the assessment year 2012-13 and thereafter there is no change in the nature of purchases since they have been made in cash, supported by self made vouchers. The very nature of the industries, a slaughter house, the assessee company is required to made purchases from the small butchers in cash to whom it had to make advance payments where complete address would not be available. The Id. CIT(A) has observed that since the AO has accepted the part of the purchased made in cash supported by self made vouchers, there is no reason in making disallowance of 20% of the purchases, without pin pointing specific cash vouchers. The Id. CIT(A) has rightly observed that the AO has made disallowances in the realm of assumption and guess work. We are inclined to agree with the finding of the CIT(A) that assessee case get strength from the AO's own action that in subsequent years no such disallowances have been made by the AO, particularly when there was no change of facts in the case of the assessee. The disallowance made by the AO, without any basis cannot be approved. Therefore, the Id. CIT(A) is justified in deleting disallowance of Rs.93,44,424/-.

13. In view of that matter considering the factual matrix of the case, we find no merit in the appeal of the revenue and upheld the order of the Id. CIT(A) in deleting disallowance of Rs. 93,44,424/- made by the AO. Thus, the revenue grounds are dismissed.

14. In the result, the appeal of the revenue is dismissed.

**Order pronounced in the open court on 19<sup>th</sup> /08/2019.**

**Sd/-**

**(LALIET KUMAR)  
JUDICIAL MEMBER**

**Sd/-**

**(DR. M.L.MEENA)  
ACCOUNTANT MEMBER**

**\*AKV\***

Copy forwarded to:

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

**SR. PRIVATE SECRETARY  
ITAT AGRA**