

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

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.689/Del./2014
(ASSESSMENT YEAR : 2009-10)**

ITO, Ward 36 (3),
New Delhi.

vs. M/s. Gopal Food Products,
WA – 66, 3rd Floor,
Shakarpur,
Delhi.

(PAN : AAHFG5548G)

(APPELLANT)

(RESPONDENT)

Date of Hearing : 18.02.2020

ASSESSEE BY : Shri S.K. Bansal, CA
REVENUE BY : Shri S.N. Meena, Senior DR

Clarification Date of Hearing : 04.09.2020

ASSESSEE BY : Shri S.K. Bansal, CA
REVENUE BY : Shri M. Barnwal, Senior DR

Date of Order : 04.09.2020

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, ITO, Ward 36 (3), New Delhi (hereinafter referred to as 'the Revenue') by filing the present appeal sought to set aside the impugned order dated 22.11.2013 passed by the

Commissioner of Income-tax (Appeals)-XXVII, New Delhi qua
the assessment year 2009-10 on the grounds inter alia that :-

“1. On the facts and in the circumstances of the case, the order of the Ld. CIT(A) is bad in law and not in consonance with facts of the case.

2. On the facts and in the circumstance of the case, the Ld. CIT(A) had erred in restricting the addition to Rs. 6052/- out of total addition of Rs.66,69,077/- by deleting the addition upto Rs.66,63,025/- made by the A.O. after rejecting books of accounts and estimating the assessee's G.P. at 35%.

3. On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in deleting the addition of Rs.1,38,38,936/- made on account of unconfirmed creditors.

4. On the facts and in the circumstances of the case, whether the Ld. CIT(A) in his appellate order was right in directing the A.O. to verify the creditors and delete the same?”

5. “On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in accepting the additional evidence under rule 46A of the Act without appreciating the fact that A.O. had opposed the admission of additional ground.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessing officer (AO) by invoking the provisions contained under section 145(3) of the Income-tax Act, 1961 (for short ‘the Act’) rejected books of account and proceeded to assess assessee’s income at Rs.66,69,077/- by estimating the Gross Profit (GP) rate at 35% on the grounds inter alia that the debit notes for damages of Rs.26,26,497/- was not properly accounted and suspected the same to be double deduction; that the assessee had huge opening and closing stock which is abnormal; that the details of Tax Deducted at Source (TDS) deduction on freight cartage, salary, security charges, etc. were not submitted;

that the assessee had not produced books of account and that there was abnormal increase in the expenses of assessee. AO made further addition of Rs.1,38,38,936/- on account of sundry creditors under section 41 of the Act on the ground that assessee had not filed confirmations and thereby assessed the total income at Rs.2,08,20,716/-, ex parte under section 144 of the Act.

3. Assessee carried the matter before the Id. CIT (A) by way of filing the appeal who has deleted the addition by partly allowing the appeal. Feeling aggrieved by the order passed by the Id. CIT (A), the Revenue has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

4.A We have heard Id. AR for the assessee as well as Id. DR for the Revenue on clarification who have explained the queries put forth by the Bench.

GROUND NO.1

5. Grounds No.1 is general in nature and do not require any adjudication.

GROUND NOS.2 AND 5

6. Ld. DR for the Revenue challenging the impugned order firstly challenged the admission of additional evidence before the Id. CIT (A) under Rule 46A of the Income-tax Rules, 1962 (for short 'the Rules') on the ground that AO had opposed the admission of additional evidence. Undisputedly, after entertaining the application for additional evidence under Rule 46A, Id. CIT (A) sought remand report from the AO who has furnished the same on 10.05.2013 which is part of the judicial file. It was the case of the assessee before the Id. CIT (A) that notice under section 143(2) dated 11.11.2011 had mentioned that confirmation from third party was not required to be filed on the date of hearing i.e. 25.11.2011. Assessee filed confirmations from five parties qua the amount of Rs.51,64,182/- which was not considered by the AO and the assessee has also produced books of account before the AO on 27.12.2011 but the AO did not find the time to verify the same. Keeping in view the aforesaid contentions made by the assessee, Id. CIT (A) admitted the additional evidence.

7. When we examine the remand report dated 10.05.2013 on the admissibility of additional evidence, AO categorically recorded the fact that, *"Though it is an admitted fact that there was a huge pendency of scrutiny cases with this office at that time, but the*

notice u/s 143(2) along with notice u/s 142(1) in the form of a questionnaire was issued to the assessee on 11.11.2011 itself; therefore it cannot be said that the proceedings were started only on 25.11.2011.” but it goes to prove that AO has hurriedly concluded assessment proceedings within a period of 1 month and 12 days though he was having clear 15 months time to conclude the proceedings reaching to the irresistible conclusion that the assessment has been framed without providing adequate opportunity of being heard to the assessee. So, the Id. CIT (A) has rightly and validly entertained the additional evidence to decide the controversy at hand on merits.

8. So far as question of deletion of Rs.66,69,077/- made by the AO after rejecting the books of account and estimating the assessee's GP at 35% is concerned, bare perusal of the reasons for rejecting the books of account as mentioned in the preceding paras is enough to conclude that the books of account were rejected by the AO on flimsy grounds despite the fact that books of account were produced and he has himself recorded in the questionnaire with notice under section 142(1) that there is no need to file the confirmations from third parties at the time of hearing on 25.11.2011.

9. Ld. CIT (A) deleted the addition by making following observations :-

“8. The appellant had explained the inconsistencies pointed out by the A.O. and from the above it is clear that AO was not right in rejecting the books of accounts by invoking the provisions of section u/s 145(3) of the I.T. Act. Further, the A.O. in the assessment order had not mentioned the reasons for estimating appellant's Gross Profit Ratio at 35%. Therefore, the estimated addition of Rs.66,69,077/- made in the assessment order is not sustainable.” However, in the remand report dated 01.05.2013, the A.O. had stated that bins relating to repairs & maintenance (others) was not submitted during the remand proceedings. As per the P&L account of the appellant a sum of Rs.60,517/- was debited in it as repairs & maintenance (others). Therefore, the estimated addition of Rs.6,052/- being 10% of the above expenses on repairs & maintenance (others) alone is sustained. Thus, the appellant gets a relief of Rs.66,63,025/- (6669077 - 6052) and ground no.3 is partly allowed.”

10. Bare perusal of the aforesaid findings returned by the ld. CIT (A) that when rejection of books of account by the AO under section 145(3) have not been held to be sustainable, estimating assessee's gross profit ratio at 35% without any reason is also not sustainable. In the remand report, AO has only opposed debiting of amount of Rs.60,517/- in the profit & loss account on account of repair and maintenance as the assessee has not furnished the bills, for which the ld. CIT (A) has estimated the addition at Rs.6,052/- @ 10% on the aforesaid expenses on repair and maintenance. So far as remaining amount is concerned, as per remand report, AO

has duly examined books of account & ledger and has sought necessary clarification from the assessee qua the inconsistencies noted by way of reconciliation statement, there is nothing left to sustain the remaining addition of Rs.66,63,025/-. So, the Id. CIT (A) has rightly deleted the addition of Rs.66,63,025/- on the basis of facts and the evidence brought on record by the assessee during the remand proceedings. So, ground nos.2 and 5 are determined against the Revenue.

GROUND NOS.3 and 4

11. The Revenue has challenged the deletion of addition of Rs.1,38,38,936/- made by the AO on account of unconfirmed creditors.

12. It was categoric case of the assessee that during the appellate proceedings, confirmation of Rs.51,64,182/- was already filed during assessment proceedings and the balance confirmation was submitted as additional evidence. Since the AO in the remand report has preferred to remain silent as to the confirmations filed by the assessee during assessment proceedings as well as in remand proceedings, Id. CIT (A) proceeded to delete the addition after duly perusing the record subject to the verification of confirmation letter and it is brought on record by the Id. AR for the assessee that after impugned order passed by the Id. CIT (A), AO has given the

appeal effect after making due confirmation of the sundry creditors. This fact has not been controverted by the ld. DR for the Revenue during the course of arguments. So, we find no illegality or perversity in the impugned deletion made by the ld. CIT (A). Consequently, ground nos.3 and 4 are determined against the Revenue.

Order pronounced in open court on this 4TH day of September, 2020.

**SD/-
(O.P. KANT)
ACCOUNTANT MEMBER**

**SD/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 4TH day of September, 2020
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-XXVII, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**