

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “B”: NEW DELHI
BEFORE
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No. 3661/Del/2019
Asstt. Year: 2014-15

ACIT, Circle-9(1), New Delhi.	Vs.	Fauji Exim Pvt. Ltd. 1688/121, Shanti Nagar, Tri Nagar, New Delhi. PAN AABCF0696D
(Appellant)		(Respondent)
Assessee by:	Shri Deepak Bansal, CA	
Department by :	Ms. Indu Bala Saini, Sr. DR	
Date of Hearing :	16.03.2023	
Date of pronouncement :	21.03.2023	

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the Revenue is directed against the order of Ld. Commissioner of Income Tax (Appeals)-34, New Delhi (“**CIT(A)**”) dated 13.02.2019 relating to the Assessment Year (“**AY**”) 2014-15.

2. The Revenue has taken the following ground of appeal:-

“1. Ld. Commissioner of Income-tax (Appeals) erred in law and on the facts of the case in deleting the addition of Rs. 9,54,37,240/- made by the AO on account of bogus purchases/expenses.”

3. Briefly stated, the assessee is a trading company engaged in the business of export of food grains and its allied products. For the AY 2014-15, the assessee e-filed its return of income on 18.09.2014 declaring total income of Rs. 66,08,670/-. The assessee’s case was selected for scrutiny

through CASS and statutory notices were issued and served upon the assessee. In response to these notices Authorised Representative of the assessee attended the assessment proceedings from time to time and filed the necessary details as asked for. The Ld. Assessing Officer (**"AO"**) completed the assessment under section 143(3) of the Income Tax Act, 1961 (**"the Act"**) vide order dated 23.12.2016 after making addition of Rs. 9,54,37,240/- on account of bogus purchase/expenses. During the assessment proceedings the Ld. AO noticed that the assessee in its P&L account has shown purchase of Rs. 121,26,32,114/- and has shown expenses of Rs. 6,15,01,432/- on account of freight and forwarding expenses. The assessee was asked to furnish party-wise details of purchases and expenses which were duly furnished by the assessee vide its letter dated 21.10.2016. The Ld. AO issued notice under section 133(6) dated 24.10.2016 to 14 parties in order to verify the genuineness of these transactions. Out of the 14 parties the Ld. AO received reply in respect of 11 parties and 3 parties namely M/s. Ruchi Soya Industries Ltd., M/s. Mahesh Edible Oil Industries Ltd. and M/s. Amit Transport Co. did not reply. The Ld. AO brought this fact to the notice of the assessee during the assessment proceedings to which the assessee replied that the status of these parties for their reply to notice under section 133(6) is not known. In the absence of confirmation received from the above 3 parties the Ld. AO concluded that the assessee has not made any purchase and has not made any transaction in respect of freight and forwarding expenses and therefore added the amount totalling to Rs. 9,54,37,240/- in respect of transaction related to these parties to the income of the assessee treating it as bogus purchase/expenses.

4. Aggrieved, the assessee carried the matter before the Ld. CIT(A) who deleted the impugned addition made by the Ld. AO. During the appellate proceedings, the assessee made a lengthy submission in support of its contention. The assessee also filed additional evidence which were admitted by the Ld. CIT(A) who also called for a remand report from the Ld. AO as per Rule 46A of the Income Tax Rules, 1962 (**"Rules"**) vide letter dated

04.01.2019, the reply of which was submitted by the Ld. AO on 20.01.2019. The submission/ explanation of the assessee have been incorporated by the Ld. CIT(A) in para 5.2 of his order. On considering the submissions/ explanation/additional evidence given by the assessee, the Ld. CIT(A) recorded his findings in paras 5.3 to 5.9 of his order which are extracted below:

“5.3 During the course of appellate proceedings, appellant has submitted that appellant company is trader exporter and during the year under appeal the company had made sales of Rs. 127.19 Crores against which it has made purchases of Rs. 121.22 Crores and has incurred freight and forwarding expenses of Rs. 6.15 Crores. The appellant has shown gross profit 7.64% against the GP of 6.5% in preceding year. It is submitted by the appellant that 3 parties did not sent their reply in pursuance of the notice u/s 133(6) issued by the AO. The appellant had on its own submitted copy of ledger accounts alongwith relevant reference to the bank statement from which payments have made to these parties. The appellant has filed the copies of account of Ruchi Soya Industries Ltd. and Mahesh Edible Oil Industries Ltd. in support of its contention alongwith copy of audited balance sheet It is submitted by the appellant that M/s Amrit Transport Co. is related to freight provider in relation to exports made by the appellant company. In support of its contention, appellant has filed invoice wise details of freight, supply of material and its export, copy of ledger account and alongwith reference of bank statement. It is submitted by the appellant that transactions with these parties were made in immediate previous year for which assessment u/s 143(3) has been made at returned Income. The appellant has filed the confirmation ledger account of M/s Ruchi, Soya industries Ltd. and Mahesh Edible Oil Industries Ltd. Since appellant has filed the confirmation of these parties during the appellate proceedings, hence remand report as per Rule 46A is called for from the AO. In the report, AO has objected in admitting additional evidences. In the rejoinder appellant has submitted that appellant is a trader exporter where goods purchased are exported out of India, goods have been purchased and AO has not raised any objection on a single voucher. Goods purchased have been exported out of India and payments have been made against goods purchased through banking channel. Goods purchased are part of stock register and accounts of the appellant are duly audited reflecting quantitative details of stock. Payments against sales made have been received and profits has been offered for taxation.

5.4 I have considered the facts of the case, finding of the AO and submissions of the appellant. The AO has made the addition in the case of the appellant on account of bogus purchases/expenses of non receipt of information which is called for u/s 133(6). The appellant has filed the copies of accounts of these parties during the assessment proceedings and also furnished stock details, sales details, copy of bank account, reflecting payment made to these parties which were not accepted by the AO. During the appellate proceedings, appellant has filed confirmed copy of accounts of purchase parties M/s Ruchi Soya Industries Ltd. and M/s Mahesh Edible Oils, but in remand report AO raised objection in admitting additional evidence and raised doubt about the creditworthiness of Ruchi Soya Industries Ltd. As regards Mahesh Edible Oil, the AO found account not legible. Regarding freight payment, appellant has submitted that Avtar Singh & Co. the custom clearing agent of the appellant has made payments to transporter M/s Amrit Transport Co. and appellant has reimbursed the expenses to M/s Avtar Singh & Co. through banking channel. The appellant has filed the copy of ledger account of Avtar Singh & Co. and Amrit Transport & Co. and got it cross verified with the bank statement from where payments have been made. The appellant is an exporter and AO has not doubted about sales made by The appellant and profit shown thereon. Without purchases appellant could not affect the sales and during the year appellant has shown better GP compared to previous

year. The AO has made addition on account of bogus purchases and expenses but not rejected books of accounts u/s 145(3). The appellant has made advance payment against the goods purchased and bank statements reflecting advance payments to such seller of goods. Accounts of the appellant company are duly audited, reflecting quantitative details of stock items in tax audit report u/s 44AB. Export sale are reflected in audited balance sheets. Appellant is maintaining stock register and no payments were made in cash. No addition was made by the AO in preceding AY whereas appellant has made similar transaction with the aforesaid parties.

5.5 In the case of **Anis Ahmed & Sons 297 ITR 441 (SC) the Hon'ble Apex Court** held that "for the assessment year 1983-84 the assessing authority had accepted the claim of the assessee that it had conducted its business as commission agent. The traders who appeared before the assessing authority to give evidence had supported the claim of the assessee. The assessee could not be held responsible for the non-appearance of the five traders who were outside the State and from their non-appearance no adverse inference could be drawn by the authorities against the assessee. The assessment of the assessee as a trader in respect of the transactions was not tenable or justified."

5.6 In the case of **CIT Vs Sunrise Tooling Systems Pvt. Ltd. 361 ITR 206 (Del) Hon'ble Delhi High Court** hold that "in any case when sales declared by the assessee have not been doubted, it was not proper on the part of the Assessing Officer to deny the claimed purchases on the basis of which sales were made. In such circumstances, the only option if any was available with the Department was to estimate the income of the assessee during the year on the basis of trading result of earlier three years, made available at page 38 of the paper book filed on behalf of the assessee. The same has been reproduced hereinabove in the preceding paragraph. On a perusal of which we find that during the year, the assessee has shown better gross profit rate of 27.67 per cent in comparison to the gross profit rates of the earlier two assessment years. In the assessment year 2005-06, the assessee has shown the gross profit rate as 25.67 per cent, and in the assessment year 2004-05, the gross profit rate shown is 25.47 per cent. Since the assessee has shown a better gross profit rate during the year, we find that there is no justification to make addition even on this account. We thus while setting aside the orders of the authorities below on the Issue direct the Assessing Officer to delete the addition in question at Rs. 43,34,496 made by the Assessing Officer on account of the alleged bogus purchases made from Shree Laxmi Industrial Corporation...."

5.7 In the case of **YFC Projects Pvt. Ltd. Vs DCIT (2010) 46 DTR 496 Hon'ble Delhi, ITAT** held that "non-filing of confirmations. Certificate from Bank. AO was not justified in making disallowances of purchases made by the assessee merely due to non-filing of confirmation from suppliers especially when the assessee has filed certificate from bank indicating the facts the cheques issued by it were cleared and no defects in the books of account was pointed out."

5.8 In the case of **CIT v Hi Lux Automotive (P.) Ltd. (2009) 23 DTR 385 / 183 Taxman 260 (Del) (HC) Hon'ble Delhi High Court** held that "the reason for disallowing expenditure in respect of other four parties was that when the notices were sent they were not available. We are of the opinion that even in their absence the assessee had produced sufficient material to show payments, namely the bank accounts of such parties. We are constrained to note that if the summons are not issued to those parties or the same could not be served at the given addresses, the Assessing Authority could have obtained their addresses from the banks as the bank statements were produced and could have made an endeavour to serve those parties at the said addresses. Once quantitative tally of sales is furnished, the same should be accepted. It is not open for Assessing officer to disregard the same, Assessee having made payment of raw material purchase from two parties by means of A/c payee cheques and produce bank statement showing the payments. No addition could be made."

5.9 Considering the above facts that since appellant has furnished confirmed copy of account in respect of purchase parties and payments were made to them through banking channel, addition made by the AO only on account of not receiving information u/s 133(6), thereon treating them

*bogus purchases is not sustainable. Similarly appellant has made all the payments to the transporter through banking channel and AO has not brought any adverse finding on record that no transactions of sale and purchase undertaken during the year under consideration or payments were made in cash. Accounts of the appellant are audited and it has shown better GP during the year under consideration. Taking into account all these facts, addition made by the AO at **Rs. 9,54,37,240/-** is not sustainable and it is hereby **deleted.**"*

5. Dissatisfied, the Revenue is in appeal before the Tribunal.

6. The Ld. AR relied on the order of the Ld. CIT(A) and reiterated the submissions made before the Ld. CIT(A) in support of the assessee's case. On the contrary, the Ld. DR relied upon the order of the Ld. AO.

7. We have heard the Ld. Representative of the parties and perused the material available on record. After considering the finding of the Ld. AO and the submission and additional evidence filed by the assessee, the Ld. CIT(A) observed that the assessee is an exporter and that the Ld. AO has not doubted the sales made by the assessee and profit shown thereon. According to Ld. CIT(A) and rightly so without purchases assessee could not affect the sales. Moreover, during the year the assessee has shown better GP as compared to the previous year. Though the Ld. AO made addition on account of bogus purchase and expenses, he did not reject the books of account under section 145(3) of the Act. The assessee has produced bank statements reflecting advance payments to seller of goods. Accounts of the assessee company are duly audited. Quantitative details have been maintained as reflected in tax audit report submitted under section 44AB of the Act. Export sales are reflected in audited balance sheet. The assessee is maintaining stock register and no payments were made in cash. It is worthy of note that no addition was made by the AO in preceding AY where the assessee has made similar transactions with the aforesaid parties. We observe that the Ld. CIT(A) has cited many case laws wherein on similar facts no addition has been sustained. Further, we find that adequate opportunity was granted by the Ld. CIT(A) to the Ld. AO and in his remand report submitted as per Rule 46A of the Rules, no material was brought on record warranting an adverse view against the assessee.

8. On the facts and in the circumstances of the case, we hold that the addition of Rs. 9,54,37,240/- made by the Ld. AO is not sustainable and the Ld. CIT(A) was justified in deleting the same. The Ld. CIT(A)'s order is well reasoned and supported by precedents. Nothing has been brought on record by the Ld. DR to enable us to take a different view. There being no infirmity in the order of the Ld. CIT(A), we concur with his findings and reject the appeal of the Revenue.

9. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 21st March, 2023.

sd/-

**(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Dated: 21/03/2023

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Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

sd/-

**(ASTHA CHANDRA)
JUDICIAL MEMBER**

ASSISTANT REGISTRAR
ITAT, New Delhi

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