

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No. 555/Del/2019
(Assessment Year: 2015-16)

ITO, Ward-3, Karnal	Vs.	Prem Industries, Bazida Jatan Road, Karnal, Haryana
(Appellant)		(Respondent)
PAN:AAOFP7314C		

Assessee by : Dr. Rakesh Gupta, Adv
Shri Satish Goel, CA

Revenue by: Shri Vivek Vardhan, Sr. DR

Date of Hearing 15/02/2024
Date of pronouncement 19/04/2024

O R D E R

PER AMIT SHUKLA, JM:

1. The appeal in ITA No.555/Del/2019 AY 2015-16, arises out of the Id. Commissioner of Income Tax (Appeals), Karnal [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. IT/159/E/K/2017-18 dated 20.11.2018 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 04.01.2018 by the Assessing Officer, ITO, Ward-3, Karnal (hereinafter referred to as 'Id. AO').
2. The first issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in deleting the addition made in the sums of Rs 61,99,752/- and Rs 1,17,23,564/- on account of unsecured loans / bogus advances against sales from M/s

R.S.Agro Foods & M/s Gagan Enterprises respectively in the facts and circumstances of the case.

3. The assessee is engaged in the business of manufacture of rice from paddy at Bazida Jatan Road, Karnal. The assessee has shown sales and gross profit of Rs 20.59 crores and Rs 4.29 crores respectively. During the year under consideration, the assessee company received unsecured loans from 8 parties listed in pages 2 and 3 of the assessment order. The Id. AO selected 5 parties out of 8 and issued summons u/s 131 of the Act. 3 parties responded directly by furnishing the requisite details. However, in respect of two parties viz. M/s Gagan Enterprises of Rs 1,17,23,564/- and M/s R S Agro Foods of Rs 61,99,752/-, the summons issued u/s 131 of the Act were returned back unserved with postal remarks 'no such person exists in the said address'. Another summons was issued by the Id. AO on 31.10.2017 to these two parties which remained unserved. Inspector of Income Tax was deputed to make independent enquiries and serve the summons u/s 131 of the Act to the aforesaid two parties. The Inspector reported that the said parties / concerns mentioned are not existing on the said address. Infact the Inspector Report stated that in the address of M/s R S Agro Foods, it was found that various tenants were using the said premises for residential purposes. With regard to address of M/s Gagan Enterprises, the Inspector reported that only name board of that party was available but the shop / office was found to be closed and hence summons could not be served on both the concerns. The Id. AO further observed that survey operation was carried out in the case of Shri Hitesh Jain, Proprietor of M/s Mittersain Rajesh Kumar, Anaj Mandi, Karnal on 22.5.2017, wherein he had confessed in his statement that he used to provide accommodation entries on commission basis. Further during survey operations, various blank cheques and bank pass books of various parties / persons including M/s R S Agro Foods were found lying at the business premises of M/s Mittersain Rajesh Kumar, Anaj Mandi, Karnal which clearly shows that these concerns are bogus concerns existing only for providing bogus entries to various parties. Accordingly, the Id. AO issued a show cause notice as to why the loans received from M/s R S Agro Foods and M/s Gagan Enterprises should not be treated as

unexplained cash credit u/s 68 of the Act while completing the assessment in the hands of the assessee.

4. The assessee furnished the following documents and explanations before the Id. AO :-

A. Sanjeet Kumar, Proprietor of M/s Gagan Enterprises

(i) Copy of Account for the period 1.4.2014 to 31.3.2015

(ii) Copy of Bank Statement of Gagan Enterprises from Karur Vysya Bank for the period 28.11.2014 to 2.7.2015 i.e. during the period of transactions

(iii) Copy of acknowledgement receipt of Sh. Sanjeet Kumar, Proprietor filed vide ack. Receipt No. 803468211180915 dt. 18.09.2015 i.e. with ITO, Ward-47(1), New Delhi for asst. year 2015-16

(iv) Copy of A/c of M/s Gagan Enterprises for the period 01.04.2015 to 31.03.2016

(v) Copy of bills alongwith transport GRs vide which goods were delivered to M/s Gagan Enterprises

(vi) Confirmation from the party has already been filed with your office. It is also learnt that confirmation has also been sent to your good office independently. It is further learnt that **Sh. Sanjeet Kumar has since expired and cannot be presented in person** to your office as after his death the business premises are lying closed. **(EMPHASIS SUPPLIED BY US)**

B. Sh. Satish Prop. M/s R S Agro Foods

(i) Copy of Account along with confirmation statement

(ii) Copy of Bank Statement of M/s R S Agro Foods from Karur Vysya Bank for the period 29.11.2014 to 31.03.2015

(iii) Copy of A/c of M/s R S Agro Foods for the period 01.04.2015 to 31.03.2016

(iv) Copy of bills along with Transportation GRs

(v) Copy of stock register duly attested by market committee is enclosed in evidence to stock released to parties against respective bills for which copies have been filed above. The party has filed confirmation with your good office, in response to your notice as per communication received from party.

5. The Id. AO observed that in compliance to summons issued u/s 131 of the Act to the transporters of Karnal, the Partner / Proprietor of some of the transport companies namely M/s Balaji Transport Co., M/s Mahadev Transport Company and Shri Sai Road Carriers had attended the proceedings but all these persons had stated that they had only issued blank bilties to the parties and not a single word has been written on bilties by them. The Id. AO accordingly sought to disbelieve the explanation of the assessee that unsecured loans received during the year under consideration from M/s Gagan Enterprises and M/s R S Agro Foods got converted into sales in the next financial year. Further in order to verify the veracity of the sales made by the assessee to M/s R S Agro Foods and M/s Gagan Enterprises, the Id. AO issued summons u/s 131 of the Act to the transporters i.e. Sh. Narender Kumar Arora, Proprietor Shri Sai Road Carriers , M/s Mahadev Transport Company and M/s Balaji Transport Company. In compliance thereon, all the persons attended the proceedings and stated they had only issued blank bilties eto the party and not a single word was written on the bilties by them. When asked to produce the confirmed copy of account of M/s Prem Industries , Karnal and to produce the copies of bilties, in compliance thereto, they had stated that no bilties are available with them. Accordingly, the Id. AO concluded that the sale of rice shown by the assessee in subsequent year also is bogus which stood adjusted against the unsecured loans. The Id. AO ultimately held that the identity of the lenders, creditworthiness of the lenders and genuineness of the transactions were not proved by the assessee beyond reasonable doubt and proceeded to treat the unsecured loans received in the sums of Rs 61,99,752/- from M/s R S Agro Foods and Rs 1,17,23,564/- from M/s Gagan

Enterprises as unexplained cash credit u/s 68 of the Act. The Id. CIT(A) deleted the said addition.

6. We have heard the rival submissions and perused the materials available on record. We find that the assessee had reiterated its stand before the Id. CIT(A) by drawing his attention to the various replies filed before the Id. AO. It was specifically brought to the notice of Id. CIT(A) that the Id. AO referring to the survey conducted in the case of Mr Hitesh Jain has got no relevance at all with the facts of the assessee herein as the assessee had not done any business transactions with the said party. Further M/s Gagan Enterprises also has got no connection at all with Mr Hitesh Jain. It was specifically pleaded that the amounts received from M/s R S Agro Foods and M/s Gagan Enterprises were only on account of advance received for sales (though classified as unsecured loans in the balance sheet). Further the assessee furnished the details of amounts available with the concerned parties as on the date of lending monies to the assessee in a tabular form as under:-

a. R.S. Agro Food, 2251, 3rd Floor, Gali Raghunandan, Naya Bazar, Delhi

<i>Deposit in our Bank A/c by RTGS</i>	<i>Amount</i>	<i>Amount available with Gagan Enterprises in his Bank A/c before RTGS (Paper Book Pages 114-120)</i>
<i>29.11.2014</i>	<i>Rs. 24,99938</i>	<i>Rs.38,88,309</i>
<i>22.12.2014</i>	<i>Rs.1499,938</i>	<i>Rs.43,61,933</i>
<i>23.12.2014</i>	<i>Rs.24,99,938</i>	<i>Rs.28,67,181</i>
<i>06.02.2015</i>	<i>Rs. 37,23,936</i>	<i>Rs.40,04,031</i>
<i>07.02.2015</i>	<i>Rs. 4,99,938</i>	<i>Rs.5,10,007</i>
<i>28.03.2015</i>	<i>Rs.2,99,938</i>	<i>Rs.18,53,937</i>
<i>28.03.2015</i>	<i>Rs.6,99,938</i>	<i>Rs.15,53,937</i>

7. Further the assessee reiterated that it had submitted the copy of ledger account , copy of bills along with transport GRs, copy of bank statements of the lenders, F-Form of M/s R S Agro Foods and M/s Gagan Enterprises, copy of stock register attested by the market committee with respect to stock out for sale to M/s R S Agro Foods and M/s Gagan Enterprises in next year, copy of ledger account of Sale of Rice in next year, copy of ITR acknowledgement of the proprietors of M/s R S Agro Foods and M/s Gagan Enterprises and Confirmation from the said parties. It was also submitted that Sh. Sanjeet Kumar , Proprietor of M/s Gagan Enterprises had expired and hence could not be presented in person before the Id. AO and that after his demise, the business premises was closed. We find that the Id. CIT(A) had categorically observed that the assessee had produced the books of accounts along with day to day purchase, transactions of sales in the succeeding year where sales to these two parties were part of the total sales and declared in the VAT returns which has been accepted. Further the income tax returns of Asst Year 2016-17 also reflected the total sales made by the assessee which admittedly included the sales made to these two parties. The stock registers maintained by the assessee clearly indicated the outflow of stocks from the side of the assessee. All sales were made through regular banking channels and not through cash. The TIN of these two parties do existed and disclosed in the VAT returns filed by the assessee. F-Forms in the case of the assessee qua the sales made to these two parties were accepted by the VAT authorities. Hence it is established beyond reasonable doubt that the amounts received from these two parties are not merely loan simplicitor but only advance received for sale of goods. It is a fact that the sale of goods had indeed happened to these two parties from the assessee which was duly accepted by the revenue in Asst Year 2016-17 and also by the VAT authorities. Hence there is no question of treating the amounts received as advance for sale of goods as unexplained cash credit u/s 68 of the Act during the year under consideration. Accordingly, we do not find any infirmity in the order passed by the Id. CIT(A) granting relief to the assessee. The Ground Nos. 1 to 7 raised by the revenue are hereby dismissed.

8. The next issue raised by the assessee is challenging the disallowance of purchases made from M/s Prashant Agro Foods to the tune of Rs 1,06,53,404/-.

9. The Id. AO observed that the assessee had made purchases of Basmati Rice from M/s Prashant Agro Foods to the tune of Rs 1,06,53,404/- during the year and sought to examine the veracity of the same by issuing notice u/s 133(6) of the Act to the said supplier which was returned unserved. The Inspector of Income Tax was deputed to serve upon the notice u/s 133(6) of the Act to the said supplier, who also reported that the said party is not existing at the given address. Since the concerned party is non-existent, the entire purchases made from the party was treated as ingenuine and disallowance was made in the assessment. The Id. AO issued a show cause notice as to why the purchases made from Prashant Agro Foods should not be treated as ingenuine. The assessee responded by furnishing the following details :-

"(i) Copy of A/c of the party for the period 01.04.2014 to 31.03.2015 alongwith confirmation from the said concern

(ii) Copy of Bank Statement of Prashant Agro Foods for the period 07.01.2015 to 31.3.2015

(iii) Copy of Bills along with transportation GRs issued to M/s Prashant Agro Foods

(iv) The Party has informed that separate confirmation have been sent to your good office

10. Apart from this, the assessee met each and every averment made by the Id. AO in the show cause notice in the reply letter filed with facts and figures. The Id. AO however disbelieved the entire contentions of the assessee and proceeded to treat the purchases made from this supplier as ingenuine and disallowed a sum of Rs 1,06,53,404/- in the assessment.

11. The assessee pleaded before the Id. CIT(A) that the Id. AO vehemently relied on the report of the Inspector to draw adverse inference against the assessee qua the purchases made by the assessee from M/s Prashant Agro Foods. But the report of the Inspector of Income Tax was never produced to the assessee for its rebuttal. The

alleged deficiencies in the bills i.e. Bill No. 1776 dt 4.1.2015 and Bill No. 1775 dt 6.1.2015 was duly explained by the assessee and it was specifically explained that both the bills are dated 4.1.2015 only and not as stated by the Id. AO. The details of the same are as under:-

Bill No. 1775 -G.R. No. 5019 dt 4.1.2015- 248.40 quintals for Rs 8,15,000/-

Bill No. 1776 -G.R. No. 5020 dt 4.1.2015- 249.90 quintals for Rs 8,19,922/-

12. The Id. AO had observed that no purchase of rice had been made from 1.1.2015 to 5.1.2015. In this regard, it was explained that goods in stock register could be entered only when the goods are received and not hypothetically on the basis of bills issued. These goods were received by the assessee on 6.1.2015 and 7.1.2015 and accordingly entered in the stock register on the date of receipt. With regard to the same handwriting in the stock register, it was explained that when the proprietor and accountant are same, the handwriting also would be the same. It was emphasized that the concerned supplier had directly sent confirmation to the Id. AO confirming the supply of rice to the assessee together with furnishing of various documents called for by the Id. AO. We find that the Id. CIT(A) had given a categorical observation that on perusal of the documents filed by the assessee before the Id. AO, the details of purchase of rice from M/s Prashant Agro Foods and corresponding sales of such purchases were duly verifiable from the day to day stock register which was duly attested by the Market Committee, Karnal. Purchase of goods from M/s Prashant Agro Foods had been shown as goods received in the stock register. Similarly when those goods are sold, corresponding outflow of stock entry was duly recorded in the stock register. Further we find that the Id. CIT(A) had referred to the yield of rice that could be derived by the assessee and had compared the same with comparable instances. The Id. CIT(A) had even compared the yield of rice derived during the year at 68.36% which was 67% in the immediately preceding assessment year. The Id. CIT(A) also observed that the books of accounts and the book results were not rejected by the Id. AO and purchases from M/s Prashant Agro Foods alone had been doubted by the Id. AO. Even for this disputed

purchases, the corresponding sales had been accepted by the Id. AO. Accordingly, he deleted the disallowance of purchases. We find no infirmity in the said findings of the Id. CIT(A). Accordingly, the Ground 8 & 9 raised by the revenue are dismissed.

13. The Ground No. 10 is general in nature.

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

Order pronounced in the open court on 19/04/2024.

-Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

-Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Dated: 19/04/2024

A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi