

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

Before Dr. B. R. R. Kumar, Accountant Member

Ms. Astha Chandra, Judicial Member

ITA No. 3866/Del/2016 : Asstt. Year : 2012-13

ACIT, Circle-50(1), New Delhi	Vs	M/s S. S. Brothers, 7A/42, WEA, Karol Bagh, New Delhi-110005
(APPELLANT)		(RESPONDENT)
PAN No. AANFS2475A		

**Assessee by : Sh. Pradeep Dinodia, CA &
Sh. R. K. Kapoor, CA**

Revenue by : Ms. Monika Dhami, CIT-DR

Date of Hearing: 13.02.2024

Date of Pronouncement: 19.04.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the Revenue against the order of Id. CIT(A)-17, New Delhi dated 04.04.2016.

2. Following grounds have been raised by the Revenue:

"1. The Ld. CIT(A) has erred in deleting the addition of Rs.23,36,84,204/- on account of addition made by the AO by invoking section 145(3) by rejecting books of account and enhancing the G.P. Ratio to 11.57% as against 3.05 declared by the assessee firm. The Ld. CIT(A) has erred in not considering that the assessee does not maintain proper stock register, the lacunae of which has been explained in detail by the AO in his assessment order.

2. The Ld. CIT(A) has erred in not considering that the assessee firm has made most of the expenditure and purchase of meat in cash, which is not verifiable and even not justified in absence of any confirmations, PAN, Address of the raw meat suppliers etc. The assessee was even unable to justify the claim of erred in not considering that the assessee has not been able establish a direct nexus between the increase in turnover and

increase in percentage of direct expenses, which has been specifically claimed by the assessee while calculating G.P.

3. The Ld. CIT(A) has erred in not considering that the assessee purchase same raw meat at different rate for different sister concern i.e. M/s Al Nasir Agro Foods, which is the main reason for unjustified purchase of raw meat.

4. The Ld. CIT(A) has even erred in not considering that one of the main supplier to the assessee M/s Al Nasir Agro Foods do not maintain proper stock register and hence it also confirms that there is unverifiable purchases.

5. The Ld. CIT(A) has erred in accepting the arguments of the assessee despite objections raised by the AO in his remand report.

6. The Ld. CIT(A) has erred in deleting the interest paid on late payment of TDS deducted.

7. The Ld. CIT(A) has erred in accepting that the interest paid on late payment of TDS is not a penal interest."

3. Facts pertinent to the adjudication of the case are that the assessee, a firm is in the business of trading of raw & frozen meat comprising of three partners namely, Mohd. Saleem Qureshi, Mr. Shakir Qureshi and M/s Al Nasir Export Pvt. Ltd. The gross profit of the assessee in the earlier three years to the A.Y. 2012-13 was in the range of 11.5% whereas during the year the GP of the assessee was 3.05%. The net profit of earlier years ranged from 0.47% to 0.62% whereas the net profit declared in the current year is 0.36%. The assessee was asked the reasons for drop in the net profit and gross profit by the Assessing Officer. The assessee submitted that the assessee discontinued low margin raw meat trading in F.Y. 2011-12 and dabbled in frozen meat manufactured where it achieved better margins. Margins in frozen meat trading were however lower due to export market conditions. Frozen meat trading formed the largest component of export sales. However, the low margin export sales were duly compensated by export incentives of

Rs.7.87 crores during the year. On the other hand, the Assessing Officer determined the direct expenses over the earlier period of three years which was ranging from 85% to 95% compare to the 97% of the direct expenses this year and after examining the stock register and cash book rejected the books of accounts and estimated GP @ 11.57% against the GP declared of 3.05% by the assessee.

4. Aggrieved, the assessee filed appeal before the Id. CIT(A).

5. During the appellate proceedings, the Id. CIT(A) has examined the various issues, obtained the remand report from the Assessing Officer and verified the rejoinder by the assessee. The various points examined by the Id. CIT(A) were,

- Maintenance of bills & vouchers of direct expenses
- Claim of higher direct expenses
- Purchases from associate concerns
- Cash purchase of raw material
- Application of provisions of Section 40A(2)
- Correspondence of purchase & export orders
- Maintenance of stock register

6. The submission of the assessee before the Id. CIT(A) are as under:

- i. That the assessee is mainly engaged in the business of raw meat, it deals in trading, processing and freezing of meat which is exported to customers outside India.
- ii. That there was a change in the export policy by the Ministry of Commerce, Government of India wherein the sourcing of meat from unidentified sources was banned

- and accordingly the assessee was forced to source the meat only from the approved meat plants.
- iii. That the calculation of gross profit which indicated the sharp decline in GP was erroneous because sales figure in current year have taken on FOB basis whereas in earlier years it was done on C&F basis and corrected calculation of G.P. was filed, (Paper Book Page-83) where the G.P. Rate of the same period as has been done by the learned Assessing Officer i.e. Assessment Year 2009-10 as compared with Assessment Year 2012-13 was 6.44 vs 4.83 thereby indicating a reduction of 1.61% only.
 - iv. That the duty drawback and export incentives receivable on export of meat during the Assessment Years 2009-10 to 2011-12 were 4% which during the year under consideration were reduced to 2%, which has also largely impacted the G.P. ratio.
 - v. That admittedly 99.75% of purchases of meat has been made from 2 sister concerns namely M/s. Al Nasir Exports Pvt. Ltd. and M/s. Al Nasir Agro Foods whose accounts have been duly audited and assessments have been made in both these cases for the Assessment Year 2012-13 accepting their trading results. It was submitted that the G.P. Rate shown by them was 2.77% and 2.35% by Al Nasir Agro Foods and Al Nasir Exports Pvt. Ltd. respectively which trading results have been duly accepted.
 - vi. That the purchases made in cash amounting to Rs.6.5 Crores has been made from the local traders and making of payment in cash which is permitted under Rule 6DD(j) does not convert these purchases into bogus or fictitious

purchases as alleged by the learned Assessing Officer. Similar allegations were made in the sister concern of the assessee i.e. Al Nasir Agro Foods for the A. Y. 2012-13. The Hon'ble ITAT has allowed relief to the assessee as per copy of order enclosed at Annexure 1.

- vii. That complete Books of Accounts and other documents were produced before the learned Assessing Officer and allegation that direct expenses are higher during Assessment Year 2012-13 is not correct because direct expenses had declined as compared to preceding year from 1.02% to 0.71% (Paper Book Page 152).
- viii. That the difference in price of procuring raw meat @ Rs.89/- or for that matter @ Rs.92/- per k.g. is not material and in any case depends upon the quality of meat and payment terms to the suppliers.
- ix. That day to day stock register had been maintained by the assessee. Whereas 99.75% purchases are from two related parties, 99.9% sales of the assessee are the through the medium of exports to the unrelated parties and proper export invoices are raised.
- x. That the purchase transactions with the sister concerns has not resulted into any reduction in G.P. and in any case trading results of those concerns have been accepted.

7. After examination of the details, the Id. CIT(A) held that the turnover during the year was increased by over 200% i.e. from Rs.119.16 crores to Rs.276.49 crores. There were changes in composition of sales as the assessee had made export turnover at 99.23% of the total turnover of finished frozen buffalo meat as against 64.61% in the immediate preceding

year. There was decline in the export incentives by 2% during the year. Thereby, there was sufficient cause for decline in GP rate. Further, the Assessing Officer could not brought any material on record to controvert the submission filed by the assessee whereas the assessee satisfied the reasons for fall in GP with the supporting documents/details. The Id. CIT(A) held that the Assessing Officer has not specified any defect/discrepancy in the books of account or in the documents produced by the assessee. Hence, the rejection of books of account and estimation of the GP was not justified.

8. Before us, the Id. DR supported the order of the Assessing Officer and the Id. AR relied upon the order of the Id. CIT(A).

9. The Assessing Officer mentioned that higher direct expenses were claimed. The direct expenses have infact declined to 0.71% as against 1.02% in the preceding year as per the record. The purchase price of raw-meat depends on the demand & supply and many other domestic & International factors as the assessee is engaged in export of meat out of India. The Assessing Officer has failed to identify any specific instance of any purchases which are unverifiable and not supported by bills & vouchers resulting in higher direct cost of meat purchase. In the absence of any specific illustration, the Assessing Officer is not justified in concluding that the meat has been purchased at higher prices resulting in higher direct cost. As far as, the purchases from associate entities is concerned, complete details of purchases made from associate concerns have been filed and is on record. It was explained to Assessing Officer that the purchases from associate concerns have been

made in the ordinary course of business as in the preceding years. The Assessing Officer has failed to identify any discrepancy in the purchases made from associate concerns. One of the associate concern M/s Al-Nasir Agro Foods has been filing its return of income in the same ward and has been assessed by the Assessing Officer. No instances have been brought out that the assessee has paid more than the market price to the purchases made from the sister concerns. With regard to purchase of raw-meat in cash is concerned, the purchases of meat from sundry suppliers have been made in the ordinary course of business as in the preceding years. These suppliers are generally farmers and come from nearby towns & villages to mandies. In the assessment proceedings, complete detail of the purchases were filed. The complete details with names & addresses of raw meat purchases amounting to Rs. 6.50 Crores from sundry meat suppliers in cash have again been filed before the Assessing Officer to verify the purchases in the remand proceedings. The Assessing Officer has chosen not to verify the purchases. The Assessing Officer has not brought anything on record even in the remand proceedings about the bogus nature of purchases or otherwise. Day to day stock has been maintained by the assessee and the same was produced before the Assessing Officer during the assessment proceedings. The Assessing Officer has observed that stock register maintained by the assessee produced before Assessing Officer does not give complete details like party name, transporter name, invoice No. and bill etc. In this regard, it was submitted that during the year, the assessee has mainly purchased frozen buffalo meat only from two associate concerns. Further the assessee has exported 100% of its goods through proper

Export. The export invoices give complete detail as required by the nature of business. These invoices and the stock register shows the stock in hand. These details were available with the assessee and in the stock register submitted before the Assessing Officer. The Assessing Officer has failed even in remand proceedings to substantiate his observations which can prove that the assessee's decline in Gross Profit is due to any bogus expenses or any other inflated cost. The decline is only attributable to demand & supply and different composition of products purchased and sold during the year and are not comparable with any year as no fixed Gross Profit is maintainable considering the nature of business of the assessee. The decline in gross profit is also on account of decline in export incentives viz., Duty Drawback, DEPB in this year.

10. Hence, keeping in view, the entire facts and circumstances narrated above, the decision of the Id. CIT(A) is hereby affirmed.

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

Order Pronounced in the Open Court on 19/04/2024.

Sd/-

(Astha Chandra)
Judicial Member

Dated: 19/04/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR