

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F" NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 5898/DEL/2019
Asstt. Yr: 2010-11**

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| Pankaj Kumar Kasera, 6081, Gali Batashan, Khari Baoli, Delhi-110006. | <u>Vs</u> | Income Tax Officer, Ward-46(3), New Delhi. |
| PAN: AAJPK 5753 F | | |
| APPELLANT | | RESPONDENT |
| Assessee represented by | Shri Ved Jain, Adv.; & Ms. Supriya Mehta, CA | |
| Department represented by | Shri Vivek Vardhan, Sr. DR | |
| Date of hearing | 08.02.2024 | |
| Date of pronouncement | 06.05.2024 | |

ORDER

PER M. BALAGANESH, AM:

The captioned appeal, preferred by the assessee, is directed against the order dated 12.04.2019 passed by the learned Commissioner of Income-tax (Appeals)-16, New Delhi, arising out of order dated 31.12.2017, u/s 143(3) read with section 147 of the Income-tax Act, 1961, passed by the Income Tax Officer, Ward-46(3), New Delhi, pertaining to the assessment year 2010-11.

2. Ground nos. 1 to 7 raised by the assessee, challenging the validity of reopening, were stated to be not pressed by the learned AR at the time of hearing. The same is reckoned as statement made from the Bar and accordingly ground nos. 1 to 7 raised by the assessee are hereby dismissed as not pressed.

3. Ground nos. 8 to 10 raised by the assessee are challenging the confirmation of disallowance of various expenses debited in the P&L account, either in full or on ad hoc basis by the learned CIT(A).

4. We have heard rival submissions and perused the materials available on record. The assessee is an individual engaged in the business of trading in sugar in the name of M/s Shree Balaji Sugar Co. During the year under consideration, the assessee has debited expenses to Rs 1,22,50,949/- and earned a net profit of Rs. 8,11,963/. and gross profit of Rs 66 ,76,736/-. During the course of reassessment proceedings, the assessee was asked to provide justification for the expenses incurred and debited to Profit & Loss A/c. Thereafter, the assessee filed detailed replies and also submitted the following documents in order to justify the expenses incurred by him:-

- i. Month wise details of expenses incurred
- ii. Details of salary paid
- iii. Details of unsecured loans
- iv. Copy of confirmations of parties from whom unsecured loans were obtained and interest on such loans was provided
- v. A copy of ITRs of such lenders of unsecured loans

4.1 However, ignoring the replies and documents furnished by the assessee during the course of reassessment proceedings, Ld. AO vide order dated 31.12.2017 made a disallowance of expenditure amounting to Rs.58,64,773/- alleging that the assessee has not provided proof of expenditures debited to Profit & Loss A/c. Aggrieved by the order of the Ld. AO, assessee filed an appeal before the CIT(A).

4.2 During the course of appellate proceedings, the assessee submitted an application under Rule 46A for admission of additional evidences. The copy of documents filed along with the application under Rule 46A of the Income Tax Rules, 1962 are placed at Pages 135 to 357 of the Paper Book. The assessee also submitted complete ledger accounts of the following expenses along with the application filed under Rule 46A of the Income Tax Rules, 1962:-

- i. Computer Repair & Maintenance
- ii. Conveyance Expenses
- iii. Diwali expenses
- iv. General Expenses
- v. Interest paid on loan taken from other parties
- vi. Loading & Unloading Expenses
- vii. Postage & telegram Expenses
- viii. Office Expenses
- ix. Printing and stationery expenses
- x. Salary Expenses
- xi. Staff welfare Expenses

4.3 The assessee also submitted various bills, ledgers and confirmations for the various expenses debited to P&L A/c which are enclosed in Pages 149 to 357 of the Paper Book. The assessee also vide his detailed written submissions enclosed in Pages 394 to 450 of the Paper Book submitted that the expenses have been incurred in the normal course of business in order to earn income from the business and that the accounts of the assessee are duly audited by a Chartered Accountant and each and every expense has also been duly verified by the tax auditor. The assessee vide its written submissions filed before Ld. CIT(A) explained each and every head of expense along with justification for every expense having been incurred for the conduct of the business. A copy of such detailed explanation with regard to each expense is given on Pages 428 to 441 of the Paper Book. After considering the detailed written submissions filed by the assessee, Ld. CIT(A) partially deleted the additions made by the Ld. AO and confirmed the addition totaling to Rs. 46,95,728/- by applying an ad hoc disallowance rate of 80% to certain expenses and by disallowing certain expenses in full. Amount wise disallowance of each expense as confirmed by the Ld. CIT(A) are as follows:-

1. Printing & Stationery Expenses - Rs. 82,425/-
- ii. Postage & Telegram Expenses - Rs. 46,367/-
- iii. Salary Expenses- Rs. 16,86,880/-
- iv. Interest on unsecured loans - Rs.9,91,853/-
- v. Staff Welfare Expenses - Rs. 1,46,225/-
- vi. Computer Repair & Maintenance Expenses- Rs.30,800/-
- vii. Conveyance Expenses - Rs. 1,54,070/-

- viii. Diwali Expenses-Rs.62,600/-
- ix. General Expenses- Rs.95,431/-
- x. Office Expenses-Rs.1,12,610/-
- xi. Loading & Unloading Expenses-Rs. 12,86,464/-

4.4 Aggrieved by the order of CIT(A), the assessee has filed an appeal before the Tribunal. It is pertinent to note here that the assessee has maintained complete books of accounts which were duly audited by a Chartered Accountant and were submitted to the Ld. AO during the course of re-assessment proceedings. Further, no specific irregularity or error has been pointed out by the Ld. AO in the books of accounts submitted by the assessee. Also, the assessee has submitted detailed documents and explanations to justify the expenses incurred for the purposes of the business and no defect or discrepancy has been pointed out in the details furnished by the assessee. On perusal of various pages of the paper book, which are also listed hereinabove, we find that the observations made by the learned AO in para 2 of the assessment order that no details were furnished by the assessee, are factually incorrect. This fact was not controverted by the Revenue before us as it is glaring on us. Despite submission of various details, as listed supra, the learned CIT(A) had sustained the disallowance for some of the expenditures either in full or on ad hoc basis after granting some relief to the assessee. When the books of account and the book results had not been rejected by the Revenue, by pointing out specific defects therein, there is no scope for making disallowance of expenses on ad hoc basis or in full. In the instant case, the books of account have been duly subjected to audit by a Chartered

Accountant and the audited books of account together with audited financial statements, were also duly placed on record before the learned AO. It is not the case of the Revenue that the said expenditures were not incurred by the assessee wholly and exclusively for the purpose of business. These expenses were subjected to disallowance only on flimsy grounds that on the vouchers, revenue stamps are not affixed. In this case, it is pertinent to note that the turnover of the assessee is Rs. 160.46 crores and the total administrative expenses debited by the assessee is hardly Rs. 58.64 lakhs. Hence, we have no hesitation to delete the entire disallowance of expenses debited in the P&L A/c totaling to Rs. 37,03,875/- (Rs. 35,75,083+82,425+46,367), being the figures mentioned in ground nos. 8 & 10. Accordingly, ground nos. 8 & 10 raised by the assessee are hereby allowed.

4.5 With regard to disallowance of interest paid on unsecured loans in a sum of Rs. 9,91,853/-, we find that no addition has been made by the learned AO for the receipt of unsecured loans. In other words, unsecured loans received by the assessee have been accepted as genuine by the learned AO. Further, the assessee had duly furnished the confirmations from the unsecured loan creditors, which fact is also confirmed by the Ld. CIT(A) in his order. It is not the case of the Revenue that the said loans were not utilized by the assessee for the purpose of his business. Absent such findings, interest paid on unsecured loans which were considered as genuine, cannot be subjected to any disallowance. Hence, we direct the Ld. AO to grant deduction for interest in the sum of Rs. 9,91,853/-. Accordingly, ground no. 9 raised by the assessee is allowed.

5. Ground nos. 12 & 13 raised by the assessee are general in nature and do not require any specific adjudication.

6. Ground no. 11 raised by the assessee is challenging the confirmation of disallowance of Rs. 73,44,755/- on account of difference in purchases debited by the assessee vis a vis corresponding value shown by the suppliers in their response to notice issued u/s 133(6) of the Act.

6.1. We have heard rival submissions and perused the materials available on record. During the course of reassessment proceedings, in order to verify the genuineness of the purchases made by the assessee, the Ld. AO called for information from various parties under section 133(6) of the Act. Out of various parties from whom the purchases have been made by the assessee, the Ld. AO disallowed purchases to the extent of Rs. 3,25,95,920/- made from two parties namely Thiru Arooran Sugar Ltd and Dwarikesh Sugar Industries Ltd as under:-

| S. No. | Purchases from | As debited to Trading A/c | As confirmed by party | Difference |
|--------|---------------------------------|---------------------------|-----------------------|-------------|
| 1. | Thiru Arooran Sugar Ltd. | 12,34,96,604 | 9,14,42,559 | 3,20,54,045 |
| 2. | Dwarikesh Sugar Industries Ltd. | 15,62,28,204 | 15,56,86,329 | 5,41,875 |
| | TOTAL | | | 3,25,95,920 |

6.2. To explain the above difference, the assessee submitted a reconciliation of the purchases vide letter dated 31.12.2017 enclosed in Page 113 of the Paper Book. The assessee explained that the difference of Rs. 3,20,54,045/- with regard to purchases made from Thiru Arooran Sugar Ltd. is on account of different accounting treatment of

freight and loading & unloading expenses by the assessee and Thiru Arooran Sugar Ltd. The assessee also explained that the difference of Rs. 2,52,51,165.45/- is on account of sales recorded by Thiru arooran Sugar Ltd in the name M/s Subham Sugar Agency Ltd by mistake instead of the assessee. Therefore, the entire difference of Rs. 3,20,54,045/- has been reconciled by the assessee. The assessee has duly submitted a copy of ledger account of the assessee in the books of Thiru Arooran Sugar Ltd. and vice versa and the same is placed at Pages 114 and 117 of the Paper Book.

6.3. The assessee further explained that the difference of Rs. 5,41,875/- with regard to Dwarikesh Sugar Industries Ltd. is on account of timing difference of recording of such transaction by the assessee and Dwarikesh Sugar Industries Ltd. While the transaction of purchase has been recorded by the assessee in the month of April 2009 when the goods were actually received by the assessee, the sale transaction to that effect was recorded by Dwarikesh Sugar Industries Ltd. in the month of March 2009 itself. Therefore, the assessee had reconciled the difference with regard to Dwarikesh Sugar Industries Ltd. A copy of reconciliation is placed at Page 134 of the Paper Book. A copy of ledger account of Dwarikesh Sugar Industries Ltd in the books of the assessee is placed at Pages 119 to 127 of the Paper Book.

6.4. However, the Ld. AO disregarded the explanation submitted by the assessee and made an addition of Rs 3,25,95,920/- in the hands of the assessee. Aggrieved by this, assessee filed an appeal before the Ld. CIT(A). Before the Ld. CIT(A), the assessee submitted the copy of invoices and debit notes from the above parties as additional evidences and explained that the difference in the purchases recorded by the different

parties was due to various reasons such as taxes, freight charges etc. The assessee further submitted the following reconciliation from M/s Thiru Arooran Sugar Ltd, which is as under:

| Particulars | Amount (Rs.) |
|--|---------------------|
| Purchases as per books of accounts of the assessee | 12,34,96,604/- |
| Add: Freight Charges paid by the assessee to M/s Thiru Arooran Sugar Ltd. vide Debit Note No. 198 dated 18.12.2009 issued by M/s Thiru Arooran Sugar Ltd. against invoice No. TASL-TMK/198/2009 which should have been recorded in Purchase A/c by the assessee in his books, however mistakenly recorded in Loading and Unloading Expenses A/c | 1,74,438.65/- |
| Less: Purchase made by the assessee vide invoice no. TASL-ACR/165/2009 dated 31.10.2009 from M/s Thiru Arooran Sugar Ltd. which was recorded by M/s Thiru Arooran Sugar Ltd. in the name of M/s Subham Sugar Agency Ltd., Kolkata instead of assessee | 2,52,51,165.45/- |
| Less: Freight Charges paid by the assessee to M/s Thiru Arooran Sugar Ltd. vide Debit Note No. 165 dated 31.10.2009 issued by M/s Thiru Arooran Sugar Ltd. against above mentioned invoice No. TASL-ACR/165/2009 dated 31.10.2009 which was recorded by M/s Thiru Arooran Sugar Ltd. in the name of M/s Subham Sugar Agency Ltd., Kolkata instead of | 1,55,887.55/- |
| Less: Railway Freight paid by the assessee to to M/s Thiru Arooran Sugar Ltd. which was recorded by M/s Thiru Arooran Sugar Ltd. in the name of M/s Subham Sugar Agency Ltd. Kolkata instead of assessee | 13,05,137/- |
| Sales recorded by M/s Thiru Arooran Sugar Ltd. (bifurcation of the said amount is highlighted in the ledger account of the assessee in the books of M/s Thiru Arooran Sugar Ltd. | 9,69,58,853.59/- |

6.5 The assessee has further submitted that the difference between Rs.9,69,58,853/- as mentioned above and Rs.9,14,42,559/- is on account of railway freight and debit note with respect to such railway freight has also been issued by Thiru Arooran Sugar Limited as is evident from Page 358 of the Paper Book.

6.6 Further, with respect to the purchases from Dwarikesh Sugar Industries Ltd., it was submitted that the purchases worth Rs. 5,64,075/- in the month of March 2009, was received by the assessee on 01.04.2009 and was recorded only after 01.04.2009. However, such sales was recorded by the M/s Dwarikesh Sugar Industries Ltd. in its books in the month of March 2009 itself. Thus, the difference was on account of timing difference in recording the entry by the assessee and the party.

6.7 However, the Ld. CIT(A) after considering the submissions of the assessee sustained the difference of Rs. 68,02,880/- in the case of M/s Thiru Arooran Sugar Ltd and Rs. 5,41,875/- in the case of M/s Dwarikesh Sugar Industries Ltd.

6.8 It is pertinent to note that the said suppliers had duly responded to the notices issued u/s 133(6) of the Act directly before the learned AO. In fact the addition per se has been made based on the figures reflected by the party in comparison to the figures shown by the assessee herein. Though there are certain differences in terms of accounting policies/ deficiencies carried out by the suppliers in their respective books (i.e. Thiru Arooran Sugar Ltd.), still the closing balance outstanding as on 31.03.2010 reflected by the said supplier in the sum of Rs. 2,52,962/- duly matches in both the parties books. This clearly goes to prove that the reconciliation submitted by the

assessee hereinabove is factually correct and no adverse inference could be drawn thereon. Hence, the disallowance made by the Ld. CIT(A) based on the remand report of the Ld. AO with regard to Thiru Arooran Sugar Ltd. in the sum of Rs. 68,02,880/- deserves to be deleted and is hereby deleted.

6.9 With regard to difference in balance of Rs. 5,41,875/- in the case of Dwarikesh Sugar Industries Ltd., we find that the assessee had duly explained the same by way of proper reconciliation that the purchases to the tune of Rs. 5,64,075/- has been duly accounted by the assessee after 01.04.2009 on the date on which the goods were actually received by him, whereas the supplier had shown it as sales in the month of March 2009 itself. This had admittedly led to the difference. We find, the assessee had clearly explained the difference in the value and hence no addition to the extent of Rs. 5,41,875/- is required to be made. Accordingly, ground no. 11 is hereby allowed.

7. In the result, appeal of the assessee is partly allowed.

Order pronounced in open court on 06.05.2024.

Sd/-
(SHRI SAKTIJIT DEY)
VICE PRESIDENT

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 06.05.2024.

MP

Copy forwarded to:

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