

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'A', LUCKNOW**

**BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER
AND SHRI SUBHASH MALGURIA, JUDICIAL MEMBER**

I.T.A. No.82/Lkw/2021
Assessment year:2013-14

M/s Madhav Biscuits Pvt. Ltd., 1550, Sachendi, Kanpur. PAN:AAECP5710G (Appellant)	Vs.	Dy.C.I.T.-6, Kanpur. (Respondent)
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Appellant by	Shri Rakesh Garg, Advocate
Respondent by	Shri Sanjeev Krishna Sharma, Addl. CIT (D.R.)

ORDER

PER ANADEE NATH MISSHRA, A.M.

(A) Appeal vide I.T.A. No.82/Lkw/2021 has been filed by the assessee for assessment year 2013-14 against impugned appellate order dated 22/07/2021 (DIN & Order No.ITBA/NFAC/S/250/2021-22/1034358139(1) of Commissioner of Income Tax (Appeals) ["CIT(A)" for short]. The grounds of appeal are as under:

- "1. *Because the CIT(A) NFAC, has erred on facts and in law in upholding the disallowance of Rs.46,19,410/- out of diesel expenses arbitrarily made by the Assessing Officer without*

appreciating the facts and circumstances of the case, addition is contrary to facts, bad in law and be deleted.

2. *Because complete details of purchase of diesel both in cash and credit having been furnished, the CIT(A) and the Assessing Officer having not disputed the same have failed to appreciate the explanation and have erred in holding that since the diesel purchased in cash is not appearing in the statement of account provided by M/s. New Basant Automobile Co. from whom diesel was purchased both in cash and on credit, the disallowance of Rs.46,19,410/- made is contrary to facts, bad in law and be deleted.*
3. *Because the authorities below have failed to appreciate that diesel has been purchased both in cash and on credit from M/s. New Basant Automobile Company, which fact has neither been disputed nor denied by M/s. New Basant Automobile Company, and the authorities having solely relied upon the credit purchases, (as purchases made in cash not being credit purchases do not form part of running account), the disallowance made is contrary to facts be deleted.*
4. *Because the CIT(A) has failed to appreciate that the confirmation / copy of account provided by M/s. New Basant Automobile Company is only in respect of the credit sales and the Assessing Officer having not asked for complete sales (both cash & credit) made by M/s. New Basant Automobile Company to the assessee, thereby has erred in ignoring the purchase of diesel made in cash and has arbitrarily proceeded to uphold the addition.*
5. *Because the CIT(A) has failed to appreciate the assessee's submission of getting cash purchases verified from M/s. New Basant Automobile Company, the disallowance made by the Assessing Officer and upheld by the CIT(A) is contrary to facts, bad in law and be deleted.*
6. *Because the CIT(A) has erred on facts and in law in upholding the disallowance stating that the consumption of the diesel is excessive, without appreciating the fact that looking to the power constraints and irregular supply of power, untimely and*

abrupt failure of power supply, the consumption of diesel is bound to increase, the addition of Rs.46,19,460/- made by the Assessing Officer and upheld by the CIT(A) be deleted.

7. *Because the books of account having not been rejected, there was no reason for the authorities below to hold that there is excessive consumption & fuel/diesel, thereby making a disallowance of Rs.49,19,460/- which addition is contrary to facts be deleted."*

(B) In this case the assessee filed return of income declaring loss of Rs.1,04,12,577/-. Assessment order dated 29/02/2016 was passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 ("IT Act" for short) whereby the loss was assessed at Rs.55,58,604/-. In the assessment order, the additions made included an amount of Rs.46,19,410/- on account of disallowance out of generator expenses amounting to Rs.1,03,33,014/- claimed by the assessee. The assessee's claim of generator expenses included expenditure claimed by the assessee towards freight of diesel in addition to Rs.1,03,33,014/- towards purchase by the assessee for generator. The Assessing Officer noted that the increase in generator expenses was disproportionately higher as compared to increase in the assessee's turnover. The Assessing Officer made inquiries with M/s New Basant Automobile Company (dealer of Hindustan Petroleum Corporation Ltd.) from which the assessee purchased diesel. In response M/s New Basant Automobile Company shared copy of assessee's account in the books of M/s New Basant Automobile Company wherein the sales made to the assessee on credit was indicated as Rs.56,63,604/-. The Assessing Officer disallowed the remaining amount out of assessee's claim for purchase of diesel expenses. The Assessing Officer allowed a lump sum amount of Rs.50,000/- towards freight of diesel and disallowed the remaining amount

out of assessee's claim towards freight of diesel. Thus, the Assessing Officer allowed an amount of Rs.56,63,604/- towards purchase of diesel and Rs.50,000/- towards freight of diesel; disallowing the balance amount of Rs.46,19,410/-, incurred by assessee through cash transactions, out of the assessee's claim of Rs.1,03,33,014/- towards generator expenses. The assessee filed appeal in the office of learned CIT(A). Vide impugned appellate order dated 22/07/2021 learned CIT(A) dismissed the assessee's appeal; stating that the arguments of the appellant that the remaining amount of Rs.46,19,410/- represented cash purchase cannot be believed as no corroborating evidences were filed. The learned CIT(A) further observed that the possibility of M/s New Basant Automobile Company not entering part of the purchases in its accounts cannot be accepted because of the fact that the appellant assessee was maintaining regular accounts with M/s New Basant Automobile Company. Like the Assessing Officer, he also observed that the increase in generator expenses was disproportionate as compared to increase in turnover.

(C) Aggrieved, the assessee has filed the present appeal in Income Tax Appellate Tribunal. During the course of appellate proceedings in ITAT, the assessee filed paper book containing the following particulars:

S.No.	Particulars
1.	Copy of paper book as filed before CIT(A)-1, Kanpur and also uploaded before NFAC, Delhi
2.	Comparative statement of expenses for the year ended 31/03/2012 to 31/03/2016
3.	Copy of certificate in Form No. 3605 dated 22/01/2011 issued from District Industries Centre, Kanpur
4.	Copy of audited balance and profit & loss account for the year ended on 31 st March, 2013
5.	Copy of audited balance and profit & loss account for the year ended on 31 st March, 2014

(C.1) At the time of hearing before us, the learned Counsel for the assessee submitted that all the evidences regarding cash purchase of diesel and expenditure towards freight of diesel were provided to the learned CIT(A) during appellate proceedings. He further submitted that these evidences, filed during appellate proceedings in the office of the learned CIT(A) were also part of the paper book filed during the appellate proceedings in ITAT. He also drew our attention to the assessment order wherein the Assessing Officer rejected the assessee's explanation without even stating what explanation was furnished by the assessee. He also submitted that the Assessing Officer took an unilateral and hasty view on the basis of copy of ledger account of the assessee in the books of M/s New Basant Automobile Company. The learned Counsel for the assessee also submitted that M/s New Basant Automobile Company was under no requirement to reflect cash sales in the ledger account of the assessee in the books of account of M/s New Basant Automobile Company. He contended that the cash purchase of diesel were reflected in the assessee's books as generator expenses and was reflected as cash sales in the books of M/s New Basant Automobile Company and in doing so, there was no error in accounting either by the assessee or by M/s New Basant Automobile Company. He also submitted that there were supporting evidences for every transaction in the nature of purchase of diesel, under the head 'generator expenses', by way of cash memo issued by M/s New Basant Automobile Company. He also argued that the assessee's books of account were audited and there was no adverse observation by the auditors in the audit report. He also submitted that the Assessing Officer has not rejected the assessee's books of account and has not mentioned any defect in the accounts maintained by the

assessee. In view of these submissions, he contended , the addition made by the Assessing Officer amounting to Rs.46,19,410/- and confirmed by the CIT(A), deserves to be deleted.

(D) Learned Sr. Departmental Representative relied on the order passed by the Assessing Officer as well as the learned CIT(A). He drew our particular attention to the fact that as far as the amount of generator expenses is concerned, the amount allowed by the Assessing Officer was in itself disproportionately higher than the increase in turnover of the assessee; even when the disallowed amount is excluded from the claim of the assessee on account of generator expenses.

(E) We have heard both sides. We have perused materials on record. On perusal of the assessment order, we find that although the Assessing Officer acknowledges that the assessee had made submissions regarding generator expenses with reference to the copy of account of the assessee in the books of M/s New Basant Automobile Company; she has not stated what explanation was furnished by the assessee. She rejected the assessee's explanation without any discussion on what submissions were made by the assessee. Moreover, from perusal of the records, it emerges that she did not ask the assessee to provide supporting evidences for the explanation furnished by the assessee. The assessee furnished explanation and supporting evidences during appellate proceedings in the office of the learned CIT(A). The learned CIT(A) did not take cognizance of these supporting evidences and instead erroneously stated that no corroborating evidences were filed. Further we find from the records that the assessee filed detailed written submissions during appellate proceedings in the office of the learned CIT(A). The relevant portion of the written submissions

made by the assessee in the office of the learned CIT(A) is reproduced below:

"The AO has disallowed the aforesaid expenditure of Rs.46,19,410/- out of diesel expenses for the reasons that there is increase in the generator expenses in comparison to the expenses incurred in the A.Y. 2012-13. The total purchase of diesel for the year under consideration is Rs.1,03,33,014/-. The AO called for the details from M/s. New Basant Automobiles Co. from whom the purchases had been made. The purchases have been made both on cash and credit. M/s. New Basant Automobiles Co. have furnished copy of account only in respect of diesel sold by them, the reason being that M/s. New Basant Automobiles Co. had maintained the account of the assessee only in respect of credit sales, whereas, the sales made by them in cash was accounted for in their sales against cash memos. In other words, as per the trade practice, the sales made in cash are accounted in cash sales account, for which no party-wise ledger is maintained. Contrary to this, sales made on credit are also accounted in sales account, but corresponding debit is made to the parties account. Thus, it is only in respect of credit sales, that the parties accounts are maintained. The confirmation/copy of account provided by M/s. New Basant Automobiles Co. is only in respect of the credit sales. The AO did not ask for the complete sales made by M/s. New Basant Automobiles Co. to the assessee. The AO should have asked for complete sales made to the assessee both against the cash memos and credit memos. In absence of complete details, the confirmation provided by M/s. New Basant Automobiles Co. cannot be relied upon. The assessee on his part has furnished complete details of bills and vouchers of diesel purchased. Photocopy of the same alongwith original is being filed. The purchases made through cash memos if need be there, may be got verified from M/s. New Basant Automobiles Co. from whom the purchases have been made. The assessee on its part had requested M/s. New Basant Automobiles Co. to confirm the sales made by them to the assessee, in cash also.

There is no material on record that the assessee did not purchase the diesel. At the same time there is nothing on record to suggest that the assessee has used the diesel otherwise.

In view of the above, it is submitted, that the addition made by the AO may kindly be deleted. The appeal may kindly be allowed."

(E.1) There are materials on record that the assessee filed copy of cash memo issued by M/s. New Basant Automobile Company in respect of cash sales of diesel. These evidences were available to the learned CIT(A) and therefore, his observation that no corroborating evidences were filed in response to cash purchase of diesel, is erroneous. We also find that nowhere it is the case of either the Assessing Officer or the learned CIT(A) that any transaction on account of cash purchase of diesel were hit by section 40A(3) of the IT Act. The assessee's explanation that the generator expenses had increased disproportionately because of frequent disruption in power supply is plausible. We also find that the Assessing Officer and the learned CIT(A) have stated no reason why only a lump sum amount of Rs.50,000/- was allowed on account of freight of diesel and why the remaining amount towards freight of diesel was disallowed. We are of the view that neither the assessee nor M/s. New Basant Automobile Company made any error in recording cash transaction in respect of assessee. It was sufficient compliance on the part of M/s. New Basant Automobile Company to show credit sales in the books of account and to include cash sales in the figure of overall sales. Similarly it was sufficient compliance on the part of the assessee to show credit purchase in the account of M/s. New Basant Automobile Company and to reflect cash purchase of diesel directly under the head generator expenses. In view of the above, we are of the view that the disallowance made by the Assessing Officer and confirmed by learned CIT(A) is based merely on guess work, conjecture and surmises. Neither the Assessing Officer nor the learned CIT(A) has identified any single transaction as bogus or non genuine. In view of the foregoing, we direct

the Assessing Officer to allow the entire amount of Rs.46,19,410/- claimed by the assessee on account of generator expenses and to delete all the disallowances made out of assessee's claim for generator expenses. In view of the foregoing, the impugned order of the learned CIT(A) is set aside and the assessee's appeal is allowed.

(F) In the result, the appeal of the assessee stands allowed.

(Order pronounced in the open court on 04/09/2024)

Sd/.
(SUBHASH MALGURIA)
Judicial Member

Sd/.
(ANADEE NATH MISSHRA)
Accountant Member

Dated:04/09/2024
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow

Asstt. Registrar