

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

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No.1136/Del/2024
Assessment Year: 2015-16

Mahadev Jindal, A-48, Wazirpur Industrial Area, New Delhi, Delhi	Vs.	ACIT, Circle-36(1), New Delhi
PAN :AAIPJ3426H		
(Appellant)		(Respondent)

Assessee by	Sh. B.K. Anand, CA
Department by	Ms. Baljeet Kaur, CIT(DR)

Date of hearing	05.12.2024
Date of pronouncement	18.12.2024

ORDER

PER SATBEER SINGH GODARA, JM

This assessee's appeal for assessment year 2015-16, arises against the Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre [in short, the "CIT(A)-NFAC"], Delhi's DIN and order no. ITBA/NFAC/S/250/2023-24/1059758179(1) dated 16.01.2024 involving proceedings under section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. Heard both the parties. Case file perused.

3. The assessee raises the following substantive grounds in the instant appeal:

1. *That the learned CIT(A) having not rendered any finding on the merits of the addition made by the AO the impugned appellate order is not sustainable.*
2. *That the learned CIT(Appeals) erred in confirming the disallowance out of expenses claimed in respect of Quality Cut Rs.57,40,439/- and Freight Inward Rs.2,98,578/- without considering the evidence available in the assessment records of the assessee.*
3. *That the learned CIT(Appeals) erred in confirming the addition of Rs.9,74,34,741/- towards fresh sundry creditors made to returned income contrary to that no addition could be made under section 68 of the Act as there was no corresponding disallowance of purchases and trading results were accepted by the AO.*

4. We advert to the first and foremost issue of quality cut expenditure disallowance of Rs.57,40,439/- made by the Assessing Officer in his assessment dated 30th December, 2017 on the ground that the assessee had failed to plead and prove all the relevant facts supported by cogent evidence to this clinching fact. The CIT(A)/NFAC's ex-parte lower appellate discussion has upheld the same which leaves the assessee aggrieved.

5. Learned counsel first of all invites our attention to the assessee's petition filed under Rule 11 of the Income Tax (Appellate Tribunal) Rules, 1963 seeking to admit his additional ground that the impugned expenditure is indeed in the nature of bad debts

claim which had become irrecoverable in the relevant previous year and duly concluded for the purpose of computing its income in the preceding assessment years. The Revenue vehemently objects to admission of assessee's instant additional ground at this belated stage.

6. We quote NTPC Vs. CIT (1998) 229 ITR 383 (SC) that this Tribunal is indeed empowered to admit such additional grounds going to the root of the matter. We accordingly, admit the assessee's instant additional ground in very terms and restore the matter back to the learned Assessing Officer for his afresh adjudication to factually verify all the relevant facts under section 36(2) of the Act. This first and foremost substantive ground is partly allowed for statistical purposes in very terms.

7. Next comes the second issue of freight inward disallowance amounting to Rs.2,98,578/- made in both the lower proceedings. Learned counsel's case is that the Assessing Officer's assessment had disallowed the assessee's corresponding freight expenses of Rs.11,94,314/- @ 25%; coming to Rs.2,98,578/- despite the fact that it had filed all the relevant supportive evidence during scrutiny. We find part merit in assessee's case as neither he has

been able to discharge the onus of having incurred the impugned expenditure wholly and exclusively for the purposes of business nor the department could pinpoint any specific defect in his audited books. Faced with this situation, we deem it appropriate to restrict the impugned disallowance @ 25% made by both the learned lower authorities to that @ 10% only with a rider that the same shall not be treated as a precedent. This second substantive ground is partly accepted.

8. Lastly comes the third substantive ground between the parties wherein both the learned lower authorities have disallowed/added the assessee's sundry creditors amounting to Rs.9,74,34,741/- on account of his alleged failure to prove genuineness thereof. We note in this factual backdrop that hon'ble jurisdictional high court in case of CIT vs. Ritu Anurag Aggarwal **(2010) 2 taxmann.com 134** (Del) has decided the very issue in assessee's favour and against the department that when the revenue authorities do not reject the corresponding trading results relating to purchase and sales; the relevant sundry creditors could not be added as unexplained creditors under section 68 of the Act. We accordingly reject the Revenue's vehement contention

supporting the impugned addition in very terms. The assessee succeeds in his instant last substantive ground therefore.

9. No other ground or argument has been pressed before us.

10. This assessee's appeal is partly allowed in above terms.

Order pronounced in the open court on 18th December, 2024

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Dated: 18th December, 2024.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi