

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER
AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

**ITA No. 3555/DEL/2017
Assessment Year: 2013-14**

Late Shri Haji Mohd. Dilshad, Through Legal Heir Shri Dilnawaz (son) & Mrs. Mehrunissa (spouse) 800/1, Yogendrapuri, Muzaffarnagar PAN- AHRPD 5860 D	<u>Vs</u>	Assistant Commissioner of Income Tax, Circle-1, Muzaffarnagar.
APPELLANT		RESPONDENT

AND

**ITA No. 3754/DEL/2017
Assessment Year: 2013-14**

Assistant Commissioner of Income Tax, Circle-1, Muzaffarnagar.	<u>Vs</u>	Late Shri Haji Mohd. Dilshad, Through Legal Heir Shri Dilnawaz (son) & Mrs. Mehrunissa (spouse) 800/1, Yogendrapuri, Muzaffarnagar PAN- AHRPD 5860 D
APPELLANT		RESPONDENT

Assessee represented by	Shri Ankit Gupta, Adv.
Department represented by	Shri Om Parkash, Sr. DR
Date of hearing	20.01.2025
Date of pronouncement	27.02.2025

ORDER

PER NAVEEN CHANDRA, AM:

The captioned cross appeals, preferred by the assessee as well as the Revenue are directed against the order of the Commissioner of Income Tax (Appeals), Muzaffarnagar, dated 03.03.2017 for A.Y. 2013-14.

2. The assessee and the Revenue have raised the following respective grounds of appeal:

ITA 3555/Del/2017 (Assessee's appeal):

"1. That assessment order passed u/s 143(3) and addition made by the assessing officer are illegal, bad in law and without jurisdiction. The CIT(A) erred in upholding the same.

2. The addition/ disallowances made by the assessing officer are illegal, unjust, highly excessive and are not based on any material on record by the assessing officer. The total income of the appellant has been wrongly and illegally computed by the assessing officer at Rs.3,52,03,212.00 as against declared income of Rs.15,03,640.00. The CIT(A) erred in partly upholding the same.

3. That, in view of the facts and circumstances, the CIT(A) has erred in law and on facts in upholding the action of rejection of books of accounts U/s 145 of the assessing officer without pointing out any single discrepancy in the books of accounts maintained by the assessee, which is highly arbitrary, unjust and against the facts and circumstances of the case.

4. That, the Assessing officer/CIT(A) erred in rejecting the books of account U/s 145(3) without pointing out that how it is impossible to deduce the correct income from the books of account maintained by the assessee appellant, which is highly arbitrary, unjust, and against the facts and circumstances of the books.

5. That, the CIT(A) failed to appreciate while upholding the rejection of books of accounts that the assessee is in the business of trading of saleable of live stock and it is impossible from the fact that the assessee used to purchase from the farmers at animal market, hence, the rejection of books is purely based on surmises and conjecture and against the facts and circumstances of the case.

6. That, in view of the facts and circumstances, the CIT(A) erred in estimating the gross profit at 2.75% against the estimation of the AO at 1% and made the addition of Rs. 1,12,57,127/- against the AO of Rs.67,38,867/-, which is highly

arbitrary, unjust, excessive and against the facts and circumstances of the case.

7. That, the CIT(A) erred in relying on the comparable of Shri Mohd. Nadeem Prop. Nadeem & Sons, Saharanpur, whereas the said comparable is not at all compare to the facts and circumstances of the case, as there is more than 10 times difference in turnover.

8. That, in view of the facts and circumstances, the CIT(A) has erred in estimation of Gross Profit without appreciating the comparable given by the assessee of the different persons in the same trade of business and also that the assessee case comparable to earlier years, which is highly arbitrary, unjust and against the facts & circumstances of the case.

9. That the Assessing Officer/CIT(A), in view of the facts and circumstances of the case erred on facts and in law in making the ad- hoc addition/ disallowance on estimated basis, which is unjust, arbitrary, unlawful, highly excessive, based on surmises and conjectures and cannot be justified by any material on record.

10. The additions confirmed and the observations made by CIT (A) are unjust, unlawful and based on mere surmises and conjunctures. The additions made cannot be justified by any material on record.

11. That the explanation given evidence produced, material placed and available on record has not been properly considered and judicially interpreted and the same do not justify the additions/ allowances made.

12. That the impugned Assessment Order passed by the Assessing Officer and order passed by CIT(A) are against the principles of natural justice and the same has been passed without affording reasonable and adequate opportunity of being heard.

13. That the interest U/s 234A & 2348 has been wrongly and illegally charged as the appellant could not have foreseen the disallowances/additions made and could not have included the same in current income for payment of Advance tax. The interest charged under various sections is also wrongly worked out.

14. The appellant craves leave to add, amend, alter and or modify the grounds of appeal of the said appeal.”

ITA 3754/Del/2017 (Revenue’s appeal):

“1. The CIT(A) has erred in law by allowing relief of Rs. 2,23,62,085/- [67,38,3671- 2,68,80,345-1,12,57,127/-] out of additions made by the A.O. by taking the Net Profit 1% as against 0.18% declared by the assessee and disallowing the amount of 10% out of sundry creditors being unverified.

2. The CIT(A) has erred in law by deleting the addition of Rs. 84,000/-mad by the A.O. on account of income from house property u/s 23(1) of the Act.

3. That order of AO. be restored and that of CIT(A) be quashed.”

3. Both the cross appeals were heard together and involve same issues, hence are being disposed of by a common order for the sake of convenience.

4. Brief facts of the case are that assessee is engaged in the business of wholesale trading in meat, cattle and other live products through his sole proprietary-ship concern M/s Noorjahan Agro India. The assessee expired on 20.01.2015 and accordingly the legal heirs of the deceased assessee were brought on record. The legal heirs were thus son and the spouse of the assessee.

5. The Return of Income has been filed on 30.09.2013 declaring income of Rs.15,03,640.00 in individual capacity. In the course of assessment proceedings, the Assessing Officer noticed that the GP & NP of the assessee was not proper and in absence of details called for by the Assessing Officer, the Assessing Officer considered NP @ 1% as against declared NP 0.18%, thus making the addition of Rs. 67,38,867/- to the income of the assessee after rejecting the books of account u/s 145(3). The AO also made an addition of 10% of sundry creditors u/s 69C amounting to Rs 2,68,80,345/-. Thus, the AO completed the assessment

u/s 143(3) vide order dated 29.03.2016 at Rs.3,52,06,852.00 after making the addition of Rs.3,37,03,212.00 to the Income of the assessee appellant against the return income of Rs.15,03,640.

6. Aggrieved the assessee went before the CIT(Appeals) who after considering all aspects of the case and considering the other comparable cases estimated the gross profit @ 2.75% as against 1.38% shown by the appellant. The CIT(A) however, deleted the estimated disallowance of sundry creditors @ 10%. Now both the assessee and the Revenue are in appeal before us.

7. The learned AR strongly argued that, the assessee is carrying on trading of Saleable Live Stock i.e. Animals such as Old Buffalos, Bulls, Jhota and unused milkless Animals. The assessee has maintained the regular and proper books of accounts during the ordinary course of business and other details from which a Tax Audit Report and Audited Balance Sheet and Profit & Loss Account have been prepared and duly signed by Chartered Accountant.

8. Grounds no 1 & 2 are general in nature. With respect to ground no.3 to 6 of the assessee appeal on rejection of books u/s 145 (3), the ld AR stated that the AO rejected the books on the basis of following reasons:

- a) the assessee has not given the stock details ie. Purchase and Sales in weight in the audit report and also relied on the case of /s Al Yasin Frozen Foods Private Limited.
- b) the assessee has not able to give the details of sundry creditors such as name and addresses.
- c) there is a debit note of above Rs.5 Crores, which varies from @11.48% to 268.65% of the purchase from different parties.
- d) the violation of provision of section 40A(3) on account of purchase of ice and loading and unloading charges.
- e) the assessee has made the payment through bearer cheques and assessing officer has concluded that as to why the such payments are not made through banking channel. However the AO has accepted that the payments made for the purchases are fully covered under rule 6DD of the Income Tax Rule, 1962
- f) the vouchers produced by the assessee appellant is unnumbered and drew a conclusion, that, these are made one sitting by a single person.

9. The Id AR of the assessee submitted that the above observations of the assessing officer is based on surmises and conjectures without appreciating the business system, facts and circumstances of the case. The Id AR challenged the rejection of books of account on the following basis:

- a) the non-mentioning of quantity detail in the Tax Audit Report in clause no.28(a), where the auditor was due to some unavoidable circumstances, shortage of time and not properly guided by the representative counsel during assessment. The assessee has filed, details of Sales and Purchases in weight as required by the assessing officer.
- b) the sundry creditors of Rs.26,88,03,450/- in the year under consideration, were paid off in the subsequent year and as proof the ledger copy of the creditors was produced. Further, merely not

giving the address of the creditors does not prove that the purchases are bogus. Further, the said sundry creditors out of the purchases made during the year and the assessee appellant has confirmed the sales of the goods sold to the M/s Hind Agro Industries Limited and M/s Hind Industries Limited. The sundry creditors are trade creditors and are essential part of business, since, there are debtors of more amount than trade creditors. In any case, merely on presumption, the Sundry Creditors can not be held as bogus.

c) the assessing officer has observed that the debit note of Rs.5 Crores due to the difference of balance with M/s Hind Agro Industries Limited is because of difference is in opening balance which is carry forward from previous years. The ledger copy of the financial year 2011-12 alongwith the confirmation of the debit note issued by the M/s Hind Agro Industries Limited was produced. The difference in balances in accounts were actually due to certain adjustment or discount claimed by the said company on account of quality of material supplied to them. On this issue the reliability of books cannot be doubted.

10. The ld AR argued that there is no violation of section 40A(3) as alleged by the assessing officer as evident from the vouchers that the payment has been made on different dates and the vouchers has been prepared in consolidated manner as evidenced from the page 14 of the assessment order. The ld AR argued that the rejection of the books of accounts is not valid. The ld AR relied on following judgments of Hon'ble High Courts-

i. St. Teresa's Oil Milh 1. State of Kerala, (1970) 76 ITR 365, 367-8 (Ker.). Also see, Tolaram Duga s CIT, (1966) 59 ITR 632, 635-6 (Assam)).

- ii. CIT Vs. Amitbhar Gunwantbhai, (1981) 129 ITR 573, 580 (Guj.).
 - iii. Dunichand Dhani Ram Vs. CIT, AIR 1926 Lah 161-2 ITC 183. Also see, George Oummen Vs. C. Ag. LT., (1963) 52 ITR 977 (Cal.)."
 - iv. CIT Vs A.Raman & Co., (1968) 67 ITR 11, 17(SC).
 - v. Md. Umer Vs.CIT, (1975) 101 ITR 525(Pat.)].
 - vi. R.B. Jessaram Fatehchand (Sugar Deptt.) Vs. CIT, (1970) 75 ITR 33 (Bom.);
 - vii. M. Durai Raj Vs. CIT, (1972) 83 ITR 484 (Ker); Md. Umer Vs.CIT, (1975) 101 ITR 525(Pat.)].
 - viii. CST Vs. Vishnuchandra Vipin Chandra, (1982) 50 STC 345 (All)) unless there be a statutory obligation in that regard [Babu Lal Mahadeo Prasad Vs. CIT, (1982) Tax LR 3182 (All));
11. Regarding ground no 6 to 10 of the assessee appeal as well as ground 1 of the Revenue appeal in respect of adhoc addition/disallowance @1% i.e. Rs.67,38,867.00 on account of Estimate Net Profit against the Gross Receipt, the ld AR submitted that the assessing officer has no basis as the assessee is maintaining the regular books of accounts, which are duly audited by the Chartered Accountant. It is also stated that the decline in net profit is due to the availing of credit limit and term loan from bank ofRs.4 Crores on which the assessee had to pay excess interest of Rs.57.55 Lacs as compared to previous year.

12. The ld AR argued that the gross profit and net profit shown by the assessee is reasonable and under the parameter of the trade. It is the say of the ld AR that from the comparative details of Turnover, Gross Profit and Net Profit with other parties it is clear that the gross profit shown by the assessee is better than other similar trade assessee. The assessee has also given the explanation, regarding the fall in net profit. In view of the above facts and circumstances, the applying of the net profit @1% purely on estimate, which has no basis and not also reasonable.

13. The ld AR with respect to ground 1 of the Revenue with regard to adhocaddition/disallowance @10% of sundry creditors i.e. Rs.2,68,80,345.00 submitted that the payment to the sundry creditors has been made in the subsequent years and the ledger copy of subsequent year i.e. assessment year 2014-15 was produced before the AO. Secondly, the ld AR stated that making the estimation of sundry creditors, which leads to addition in the nature of overlapping with addition made on account of estimation of net profit by the assessing officer. It is stated that all the sundry creditors are fully verifiable and part of books of accounts. The assessing officer has not brought any adverse material on record to doubt the genuineness of such sundry creditors and

disallowance at 10% of Sundry Creditors as in Balance Sheet is arbitrary, unjustified and purely on surmises.

14. The assessee has relied upon

- order of ITAT Delhi Bench in Shamim Ahmad v. ACIT [ITA No. 1046/Del/2018 - dated 24.10.2024];
- order of ITAT in Zakira Kamil v. ITO [ITA No.3022/Del/2016 - dated 03.01.2019]
- assessment order dated 31.03.2024 passed by DCIT, Central Circle Delhi in the case of Farman for the A.Y. 2022-23;
- assessment order dated 30.03.2024 passed by DCIT, Central Circle Delhi in the case of Irshad Ahmad for the A.Y. 2022-23.

15. It was argued by the ld AR, with respect to ground no 2 of the Revenue appeal regarding the addition of Rs.84,000.00 on account of Income from House Property is made applying a deeming provision of section 23(1) of the Income Tax Act, 1961 by estimating the Annual Letting Value of the residential house situated at 338. Khalapar, Muzaffarnagar. The ld AR submitted that the assessing officer has failed to appreciate the reasons as to why the said property has been lying vacant. The assessee's counsel submitted that the property is having old construction and is not suitable for the proper living condition. Further, the property situated in the khalapar, which is remote area dominated by Muslim Community and the property situated is near the Butchered/Slaughter Houses, therefore, the property is not under the

living condition. It was further stated that the house was being used for the employees of the assessee, such as driver and labour as and when needed time to time and hence used for business purposes.

16. The ld AR argued without prejudice to the above, that the monthly rent of Rs. 10,000.00 per month is arbitrary, excessive and against the facts and considering its location, it should not be more than Rs.3,000.00 per month.

17. Per contra, the ld DR relied on the orders of the authorities below.

18. We have heard the rival submissions and perused the materials on record. We find that the CIT(A) has upheld the rejection of books of account u/s 145(3) as follows:

"On consideration of facts of the case and submission of the appellant, it has been noted that the appellant did not produce purchase bills/vouchers in support of books of account maintained. Merely stating that as the sales have been accepted and therefore the sundry creditors out of the purchases to make such sales are automatically genuine does not help the case of the appellant. In this case it is undisputed fact that the appellant has not provided the complete details of sundry creditors along with their addresses and confirmations and purchases have been made in cash/sundry creditors have been paid in cash. This fact leads to the inference that value of purchases of Rs.81.04 crore debited to the profit & loss account is unverifiable. Though the appellant can make cash payments for the purchase of livestock, meat, hide etc. as provided in Rule 6DD but it should have maintained complete verifiable record to establish the genuineness of purchases in terms of the value and 'identity and quality'. The list of sundry creditors provided during the appellate proceedings for AYs 2013-14 and 2014-15 contains only the names and amounts without having any address. The copy of accounts of the sundry

creditors asfurnished during the appellate proceedings show that payments have been shown to have been made in cash in next year. Accordingly, in this case the sundry creditors/purchases are unverifiable. Therefore, the genuineness of purchases forming part of the books of account have not been proved. Therefore the AO was justified in rejecting the same u/s 145(3) of the Act as the same were not found complete and correct. The bills/vouchers in support various items debited/credited to the profit & loss account and items of assets and liabilities in the balance sheet are integral part of the books of account. In the absence of the verifiable bills/vouchers for purchases/sundry creditors, it is noted that the books of account maintained by the appellant are not complete and correct. In the case of the appellant for AY 2012-13, sundry creditors have been disallowed @3%."

Thereafter the CIT(A) adopted, on comparative basis, a G.P. @ of 2.75% as against 1.38% shown by the assessee. The CIT(A) further deleted the addition on account of the sundry creditors as addition on estimate basis was already done.

19. We find from the facts of the case that the conclusion arrived by the CIT(A) that the assessee has not maintained the books of account properly leading to the rejection of books u/s 145(3), can not be faulted with. The audited account do not show the quantitative details and non-submission of the same due to unavoidable circumstances can not be considered a valid legal explanation. We also find that the purchases/creditors are not verifiable as no address were given of the creditors. Though we are of the view that the nature of business of the assessee is such that the purchase of live stocks and animal are made

from parties who do business in cash, yet the vouchers prepared in consolidated manner for payments do not record day to day activities to show that the books are maintained in regular course of business. The assessee did not produce any single purchase bill nor gave any verifiable address of the creditors. The assessee has relied on several decisions on the proposition of rejection of books but has not been able to substantiate the facts of its case on the basis of material evidences for verification of its vouchers/purchase bill and creditors.

20. We are of the considered view that once the books of account are validly rejected u/s 145(3) as has happened in the instant case, on account of non-verifiability of purchases and other discrepancies noted above, a reasonable, fair and judicious estimate of the gross profit would be permissible in the eyes of law. Considering the facts and circumstances of the case and on the basis of relevant materials, we are of the view that an objective and judicious view suggest that a G.P. rate of 1.5% be taken for the impugned year as against G.P. of 1.38% declared by the assessee. The gross profit on account of GP @ 1.5 % will be Rs 1,23,27,195/- and as the assessee has declared gross profit of Rs 1,12,42,731/- @1.38%, the resultant addition to the income of the assessee shall be restricted to Rs 9,84,464/-. We further hold that once

the books of account is rejected and an estimated G.P. rate is adopted, no further addition on account of bogus sundry creditors is justified. The AO is directed to delete the addition of Rs 2,68,80,345/- u/s 69C. Ground no 1 to 12 of the assessee and ground no 1 of revenue is decided accordingly.

21. With respect to ground no 2 of Revenue regarding addition of house property income u/s 23(1), we find that the assessee has not substantiated with any evidence that the said property was used for business purposes such as it being used for the employees of the assessee, such as driver and labour. The alternative argument of the assessee of reducing the annual letting value of the said property has considerable force. Considering the nature and location of the said property, and the same being old construction and not being suitable for the proper living condition, the Annual Letting Value of said property may be taken at Rs 3000/- per month. The addition u/s 23(1) is restricted to Rs 3000/- per month. Ground no 2 of Revenue is decided accordingly.

22. Ground no 13 regarding interest u/s 234A and 234B is consequential in nature.

23. In the result the appeal of the assessee in ITA 3555/Del/2017 is partly allowed and appeal of the Revenue in ITA 3754/Del/2017 is also partly allowed.

Order pronounced in open court on 27.02.2025.

Sd/-

(MS. MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-

(NAVEEN CHANDRA)
ACCOUNTANT MEMBER

Dated: 27th February 2025.

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI