

**INCOME TAX APPELLATE TRIBUNAL  
AGRA BENCH "DB": AGRA  
SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
(Through virtual hearing)**

**ITA Nos. 273 & 274/AGR/2024  
(Assessment Years: 2015-16 & 2018-19)**

DCIT, Central Circle, Agra,	Vs.	<b>Alnoor Exports,</b> M/s. AL Noor Exports, C- 4/10, 2 <sup>nd</sup> Floor, Safdarjung Development Area, South West Delhi
(Appellant)		(Respondent)
<b>PAN: AACFA2599N</b>		

Assessee by :	None
Revenue by:	Shri Sukesh Kumar Jain, CIT DR
Date of Hearing	03/02/2025
Date of pronouncement	03/02/2025

**ORDER**

**PER M. BALAGANESH, A. M.:**

1. The appeal in ITA Nos. 237 & 274/AGR/2024 for AYs 2015-16 and 2018-19, arises out of the order of the Commissioner of Income Tax (Appeals)-4, Kanpur [hereinafter referred to as 'Id. CIT(A)', in short] dated 06.06.2024 against the order of assessment passed u/s 143(3) r.w.s 143(3) and 143(3B) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 07.04.2021 by the Assessing Officer, National e-Assessment Centre, Delhi Agra (hereinafter referred to as 'Id. AO'). None appeared on behalf of the assessee despite issuance of notice on various occasions. Hence we proceed to dispose of these appeals on hearing the Ld DR and based on materials available on record.

2. The Ground Nos. 1 to 3 raised by the assessee are challenging the confirmation of disallowance of purchases made by the assessee.

3. We have heard the Id DR and perused the materials available on record. The return of income for the assessment year 2015-16 was filed by the Assessee declaring total income of Rs 8,68,68,625/-. During the course of assessment proceedings, the Id AO proceeded to examine the veracity of purchases made by the Assessee. The Assessee furnished the list of parties from whom it had made purchases. The Assessee is a partnership firm engaged in the business of manufacture and export of frozen meat, hide, MBM, poultry feed, tallow etc., from its factory at Muzaffarnagar, Meerut and Mumbai. The Assessee firm has its slaughter house and rendering plant at 9th K.M. Jansath Road, Muzaffarnagar. Live buffaloes are received from various suppliers at the factory. The same are slaughtered as per the recommended procedure after due examination by veterinary doctors. The inedible portions and hide are removed and the boneless meat is chilled for 10 to 12 hours at 0 degrees temperature. After chilling, the same is processed in various sizes as per the specifications of the respective buyers. Then the processed meat is sent for freezing at minus 40 degrees temperature. Then they are packed in corrugated cartons and stored in a cold storage till dispatch for exports. The inedible portion is sent to rendering unit for manufacturing poultry feed and tallow. The hide is sold separately.

4. The Assessee has made total purchase of Rs 242 crores during the year. All the manufacturing process of the Assessee firm are under strict supervision of Food and Husbandry Department, APEDA (Agricultural and Processed Food Products Export Development Authority) under Ministry of Commerce and Industry, Government of India and the customers of the Assessee firm. The suppliers bring live animals to the factory of the Assessee firm where they are first checked by the veterinary doctors as to whether they

are fit for human consumption. Thereafter a gate entry is made and the animals are sent to slaughter house, where the animals are slaughtered and payment to suppliers are made on the basis of the weighment. The other parts of the animal hides, fat, blood etc. are sold separately. All the purchase vouchers and payment slips are pre-numbered. At every stage of manufacturing process, exhaustive records of stocks are maintained and regularly checked. During the course of assessment proceedings, the Assessee furnished the list of parties from whom purchases were made together with their name, address, PAN and the amount of purchases made from them. Wherever PAN and address was not available, the assessee clearly stated the same in the tabular form. The Id AO sought to examine the veracity of the purchases and proceeded to issue notices under section 133(6) of the Act to 6 parties. Out of the 6 parties, notices issued to 2 parties were returned back unserved. In respect of 4 parties, where notice was served, the parties did not reply. This fact was confronted to the assessee by the Id AO. The assessee firm could contact 5 out of the 6 parties. However, only 4 parties filed the reply before the Id AO before the completion of assessment proceedings. The reply of the 5th party viz. Mohammed Imran was delivered on 1.1.2018, whereas the assessment stood completed on 31.12.2017. The 6th party viz. Haji Mohammed Yameen could not be contacted till 31.12.2017 and therefore, his reply could not be filed. Accordingly, it was pleaded that assessee had practically filed all the confirmations and documentary evidences to prove the veracity of the purchases before the Id AO. The assessee firm in respect of Mohammed Imran filed a copy of ledger account of the said party as appearing in the books of accounts, copies of sample meet receipt voucher along with bank statements showing the payments made to the said party. It was also pointed out that the said party is filing its income tax returns regularly and in support of which the assessee furnished the copy of PAN card along with ITR and computation of income for Assessment Year 2015-16. All the payments

were made to the parties by account payee cheques. The Id AO observed that 4 parties had duly responded to the notice under section 133(6) of the Act and proceeded to accept the purchases made from them as genuine. However, in respect of 2 parties where notice under section 133(6) of the Act stood not complied, the purchases made from them totaling to Rs 20,02,27,640/- was sought to be treated as unverifiable purchases and accordingly added to the total income of the Assessee.

5. The submissions of the Assessee were forwarded to the Id AO by the Id CITA for verification and a remand report was sought. The Id AO furnished remand report dated 25-01-2019 which is reproduced in pages 33 to 36 of the order of the Id CITA. In the said remand report, the Id AO submitted that in respect of Mohammed Imran, the reply in response to notice under section 133(6) of the Act was not received at all. Accordingly, it was clarified by the Id AO that the statement made by the Assessee, that Mohammed Imran had submitted the reply on 1-01-2018, to be factually incorrect. The Id AO also stated in the remand report that the other documents furnished by the Assessee for the purchases made from Mohammed Imran are not credible and hence could not be relied upon. In respect of the other party Haji Mohammed Yamin, the Id AO submitted that notice under section 133(6) of the Act originally stood issued on 8-12-2017 to the said party at the address given by the Assessee only. The said notice was returned unserved. This fact was confronted to the Assessee vide order sheet entry dated 21-12-2017. The Assessee was also requested to produce the said party before the Id AO, which stood uncomplied by the Assessee. The Id AO also submitted that the documents submitted by the Assessee for the purchases made from Haji Mohammed Yamin are not credible and hence the genuineness of the transaction were not established by the Assessee thereon. Accordingly, the Learned AO in the remand report justified the disallowance made in the assessment.

6. The Assessee filed another written submission dated 26-02-2018 before the Id CITA stating that the time provided to the parties for responding to the notice under section 133(6) of the Act and that given to the Assessee was very short during the course of assessment proceedings. Hence, whatever documents that were available with the Assessee at that point in time, the Assessee could file before the Id AO within the allotted short span. The Assessee also gave the list of documents furnished from its side for each parties in a tabular form. The Assessee apart from reiterating the earlier submissions made, merely submitted that the purchases made from these two disputed parties were already reflected in the books of accounts and the same were duly subjected to audit. No defects in the books of accounts were found by the Id AO and the book results were duly accepted. Hence, it was pleaded that the purchases could not be subjected to any disallowance when the payments for the same were made through regular banking channels. It was also submitted that these persons are not under the control of the Assessee firm. Further, the Assessee also submitted one more letter dated 5-3-2020 before the Id CITA. The Id CITA again sought for a remand report from the Id AO in respect of further submissions made by the Assessee. No remand report was furnished by the Id AO for the same.

7. The Id CITA observed that in respect of the purchases made from these two disputed parties, the Assessee could only produce self-serving documents in the form of supporting evidences to justify the claim of purchase transactions and that no third-party confirmations could be produced for the same. The Id CITA also observed that the Id AO had noticed that there was a trend of decline in the gross profit and net profit ratio during the year when compared to the preceding year. The Id CITA observed in para 5.16 of the order that wherever the parties had duly complied with the notice under section 133(6) of the Act, the Id AO had duly accepted the same to be genuine as they were supported by third-party evidences and confirmations.

However, with regard to these two disputed parties i.e. Mohammad Imran and Haji Mohammad Yameen, the 133(6) notice stood not complied by those parties. But it is to be noted that notice u/s 133(6) of the Act is sought to be issued to the two parties after substantial period of time of purchases made from them. The assessee cannot be expected to keep track of the parties from whom they may not have any transactions after the year under consideration. It is a fact that the Assessee in the instant case had duly proved the genuineness of purchases for more than 90% of the value of purchases. 4 out of 6 parties to whom notice u/s 133(6) of the Act stood properly complied by the parties before the Id AO. It is an undisputed fact that the same amount of documents are being maintained by the Assessee for all the purchase parties, which were considered to be self serving. If the same self serving documents were accepted by the Id AO for 4 parties, why the same should not be accepted for Mohd Imran and Haji Mohd Yameen. The only difference being for these two parties, notice u/s 133(6) of the Act were not responded by the parties, for which, in our considered opinion, the Assessee could not be faulted with. Reliance in this regard is placed on the decision of Hon'ble Supreme Court in the case of Orissa Corporation reported in 159 ITR 78 (SC), that merely because the third party confirmations were not received in response to notice u/s 133(6) of the Act, the genuineness of transactions of the Assessee could not be doubted by the revenue.

8. In view of the aforesaid facts and observations and respectfully following the decision of Hon'ble Apex Court referred supra, we do not find any infirmity in the order of the Id CIT(A) granting relief to the Assessee. Accordingly, the Ground Nos. 1 to 3 raised by the revenue are dismissed.

9. The Ground Nos. 4 to 5 raised by the revenue are challenging the deletion of disallowance of interest paid to related parties by applying the provisions of section 40A(2)(b) of the Act.

10. We have heard the Id DR and perused the materials available on record. The Id AO noticed that Assessee had paid interest to the related parties mentioned under Section 40A(2)(b) of the Act totaling to Rs. 14,31,847/- on the outstanding loans which are tabulated as under:-

S. No.	Name	PAN	Rate of interest	Amount of interest paid
1.	Arun Raj Sud	FEGPS6848P	8%	2,49,563
2.	Ashwin Raj Sud	FAYPS1489A	8%	2,49,184
3.	RadhikaSud	CHAPS6447N	8%	2,63,094
4.	AdityaRaiSud	FLPTS3652D	8%	2,46,407
5.	KrishanSood (HUF)	AAEHK7878N	4%	4,23,599
<b>Total</b>				<b>Rs. 14,31,847/-</b>

11. The Id AO stated that this interest is paid on unsecured loans to the related parties. From the aforesaid table, it was noticed by the Id AO that Assessee had paid interest only at the rate of 4% on the loan borrowed from Krishan Sud (HUF), whereas for other related parties, interest is paid at the rate of 8%. Accordingly, the Id AO held that the market rate of interest should be considered only at 4% for all the related parties and proceeded to disallow a sum of Rs. 5,04,124 as being excessive interest paid in terms of Section 40A(2)(b) of the Act. The Assessee before the Id CITA submitted that the market rate of interest on unsecured loans was in the range of 12 to 14% whereas the Assessee has paid only 8% to its relatives on the unsecured loans received. It was also pointed out that all the related parties are duly assessed to income tax and had offered the interest income in their returns. The Id AO had not brought any comparable instances to determine the fair market value of the interest based on prevailing market rates. This fact was duly appreciated by the Id CITA and Id CITA had deleted the excess interest paid at the rate of 4% in the sum of Rs. 5,04,124/-.

12. We do not find any infirmity in the order of the Learned CITA granting relief to the Assessee, as in our considered opinion, the same is found to be very reasonable and the Id AO had not brought any comparable instances to

prove the fact that the interest paid at the rate of 8% to few related parties was excessive and unreasonable. Moreover, the market rate on unsecured loans was in the range of 12 to 14%, whereas the Assessee had paid interest to its related parties only at the rate of 8% which is found to be reasonable. Hence, this cannot be treated as excessive and unreasonable payment of interest to the related parties warranting any disallowance under Section 40A(2)(b) of the Act. Accordingly, the Ground Nos. 4 and 5 raised by the revenue are dismissed.

13. The Ground No. 6 raised by the revenue is general in nature and does not require any specific adjudication.

14. In the result, the appeal of the revenue for Assessment Year 2015-16 is dismissed.

**ITA No 274/AGR/2024 – Assessment Year 2018-19 – Revenue Appeal**

15. The Ground Nos. 1 to 3 raised by the revenue are challenging the deletion of disallowance of expenditure in the sum of Rs 3,76,998/- under section 40A(3) of the Act.

16.

17. We have heard the Id DR and perused the materials available on record. The Id AO during the course of scrutiny assessment proceedings, sought for details of payments made in cash in violation of provisions of Section 40A(3) of the Act. The assessee furnished the list of payments made in cash in a tabular form totaling to Rs 5,91,506/-. The Id AO proceeded to disallow the same as violative of provisions of Section 40A(3) of the Act and disallowed the same in the assessment. Before the Id CITA, the Assessee furnished the



complete details together with the nature of payments and the number of persons to whom the respective payments were made date wise in a tabular form. It was submitted that all the expenses are genuine business expenditure backed by proper documentary evidences. Accordingly, it was pleaded that no disallowance under Section 40A(3) of the Act is called for. The Assessee also submitted that in the tabular form furnished before the Id AO giving the total details of cash payments made in excess of Rs 10000/-, there were certain payments which were towards capital assets and there were some duplication of entries. Hence, the same should be outside the purview of disallowance under Section 40A(3) of the Act in any event. After the removal of these deficiencies, what remains is total payments made in the sum of Rs 3,76,998/- which are tabulated in page 33 of the Order of Id CITA which is reproduced as under:-

SN	DATE	NATURE OF EXPS.	DESCRIPTION	AMOUNT	REMARK
1	19.01.2018	Mzr F.A. Tractor Trolley	being cash for tractor	1,57,000	Old second hand tractor purchased from a farmer who did not have any bank account. Since this payment is for purchase of capital asset, the disallowance can not exceed the depreciation amount of Rs. 11,775/-
2	08.11.2017	Bonus	Cash payment	1,31,750	Paid to various contractors for payment of bonus to their labour. Only payment to four contractors exceeded Rs. 10,000/-. However, payment to each labour did not exceed Rs. 10,000/-.
3	15.07.2017	Labour Welfare	Cash payment	11,000	Paid to School for fee five children of late employee of the firm.
4	08.12.2017	Labour Welfare	Cash payment	11,850	This amount was paid to 31 employees for tea, each below Rs. 10,000/-.
5	07.01.2018	Labour Welfare	Cash payment	10,038	Duplicate entry of point no. 9
6	25.11.2017	Car Running & Maintenance	Cash payment	11,050	Reimbursed to Partner/ Employee for petrol purchased on various dates. Each payment did not exceed Rs. 10,000/-.
7	1.1.2018	Car Running & Maintenance	Cash payment	12,328	Reimbursed to Partner/ Employee for petrol purchased on various dates Each payment did not exceed Rs. 10,000/-.
8	26.09.2017	Car Running & Maintenance	Cash payment	16,672	Reimbursed to Partner/ Employee for petrol purchased on various dates. Each payment did not exceed Rs. 10,000/-. (Details are

					being filed
9	14.04.2017	Jeep Running & Maintenance	Cash Payment	15,310	Reimbursed to Employee for Diesel purchased on various dates. Each payment did not exceed Rs. 10,000/-.
			Total	3,76,9987-	

18. The Id CITA accordingly appreciated the aforesaid table and explanations given by the Assessee and proceeded to delete the disallowance of expenses to the tune of Rs 3,76,998/- and sustained the disallowance of Rs 2,14,508/- (591506 – 376998). We find that the payment made towards purchase of second hand tractor was for capital purchases and the same was not even claimed as deduction in the profit and loss account. Further it was stated that the same was paid to a farmer who does not have any bank account and hence the same falls within the exception provided in Rule 6DD of the Income Tax Rules. Hence the payment of Rs 1,57,000/- has been rightly deleted by the Id CITA.

19. With regard to bonus payment of Rs 1,31,750/-, the same was paid to various contractors and to various labourers and since the payment made to each labourer did not exceed Rs 10,000/-, there cannot be any disallowance under section 40A(3) of the Act. The same has been rightly deleted by the Id CITA.

20. With regard to labour welfare expenses disallowance of Rs 11,000/- ; Rs 11,850/- , the same was paid to several employees towards school fees and tea expenses and there is no violation of provisions of section 40A(3) of the Act thereon.

21. With regard to Car running and maintenance expenses, the same represents reimbursements made to partner and employees for petrol and diesel purchased on various dates wherein each payment did not exceed Rs 10,000/-. Hence there is no violation of provisions of section 40A(3) of the Act.

22. Accordingly, the Ground Nos. 1 to 3 raised by the revenue are dismissed.

23. Ground Nos. 4 and 5 raised by the revenue are challenging the deletion of disallowance made on account of export commission expenses.

24. We have heard the rival submissions and perused the material available on record. It is not in dispute that the assessee had paid commission to non-resident Indian agents outside India for procurement of orders from buyers. These payments are made without deduction of tax at source. It is not in dispute that the buyers are located outside India and agents are also located outside India and services are rendered outside India. It is not in dispute that the non-resident agents do not have any Permanent Establishment in India. Accordingly, it was pleaded that the assessee was not liable to deduct tax at source in terms of Section 195(1) of the Act on the commission paid to the non-resident agents as the sum is not taxable in India in the hands of the non residents in terms of Section 9(1) read with Section 5 of the Act. Accordingly, it was pleaded that the provisions of Section 40(a)(i) of the Act are not applicable for the payment made in the sum of Rs. 1,66,07,634/- warranting deduction of tax at source.

25. Further, the assessee had made payment of Rs. 25,02,391/- to organizations located outside India as participation charges paid for trade fairs and exhibitions held outside India and the recipients does not have any Permanent Establishment in India. Accordingly, the plea of the assessee was that these payments are not liable for deduction of tax at source as the same is not taxable in the hands of the recipients in India. Accordingly, the provisions of Section 40(a)(i) of the Act are not applicable for the same.

26. The Id AO however, disregarded the aforesaid contentions of the assessee and proceeded to disallow a sum of Rs. 1,91,10,025/- ( Rs. 1,66,07,634 + Rs. 25,02,391/-) u/s 40(a)(i) of the Act. However, the

contentions of the assessee were duly appreciated by the Id CIT(A) and disallowance only to the extent of Rs. 1,81,423/- was confirmed by the Id CIT(A) and the remaining sum of Rs. 1,64,26,213/- towards foreign commission expenses was deleted by the Id CIT(A) by categorically holding that there was no requirement of deduction of tax at source as commission payments were made to non residents agents for services rendered outside India and the same are not liable to be taxed in the hands of the non-resident in India. We do not find any infirmity in the said finding of the Id CIT(A).

27. With regard to payment of participation charges to trade fair/ exhibition held outside India, the Id CIT(A) having taken cognizance of the various payments thereon to the various parties on various dates in the sum of Rs. 25,02,391/- observed that the assessee firm, being an exporter of meat products to various countries had participated in various trade fairs/ exhibitions held in various countries outside India to promote its business. For participation in the trade fairs/ exhibitions, the assessee had to pay charges for rent/ space/advertisement and other expenses to the organizers of the fairs. The organizers are residents outside India and do not have any business connection in India and hence, the payments are not taxable in their hands in India in accordance with Section 9 of the Act. Accordingly, the provisions of Section 195 of the Act are not applicable. The Id CIT(A) also took note of the Act that assessee had indeed deducted tax at source in respect of payments made to fairs which was booked through Indian agents. The assessee had furnished complete list of bills together with the list of countries of recipient in Form 15CA and 15CB for the entire payments made to parties outside India. We do not find any infirmity in the said order of the Id CIT(A) deleting the aforesaid addition in the sum of Rs. 25,02,391/-.

28. Accordingly, ground Nos. 4 and 5 raised by the revenue are dismissed.

29. The ground No. 6 raised is general in nature and does not require for specific adjudication.

30. In the result, both the appeals of the revenue are dismissed.

Order pronounced in the open court on 03/02/2025.

-Sd/-  
**(SATBEER SINGH GODARA)**  
**JUDICIAL MEMBER**

-Sd/-  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 03/02/2025  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi