

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 3563/Del/2023
(Assessment Year: 2014-15)**

| | | |
|--|-----|-------------------------------------|
| Manoj Chadha, W-16/19, Western Avenue, Sainik Farms, New Delhi | Vs. | ACIT, Circle-31(1), New Delhi |
| (Appellant) | | (Respondent) |
| PAN: | | |

| | |
|-----------------------|--------------------------------|
| Assessee by : | Shri Manoj Kumar, CA |
| Revenue by: | Sh. Dheeraj Kumar Jain, Sr. DR |
| | |
| Date of Hearing | 23/07/2025 |
| Date of pronouncement | 25/07/2025 |

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.3563/Del/2023 for AY 2014-15, arises out of the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'Id. NFAC', in short] in Appeal No. ITBA/NFAC/S/250/2023-24/1057143960(1) dated 17.10.2023 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 29.12.2016 by the Assessing Officer, ACIT, Circle-31(1), New Delhi (hereinafter referred to as 'Id. AO').
2. The ground Nos. 1 and 5 raised by the assessee are general in nature and does not require any specific adjudication.
3. Ground No. 2 raised by the assessee is challenging the addition of Rs. 1,80,55,733/- u/s 68 of the Act.

4. We have heard the rival submissions and perused the material available on record. The return of income for AY 2014-15 was filed by the assessee on 21.11.2014 declaring total income of Rs. 21,82,210/-. The assessee had declared business income and income from other sources. During the year under consideration, the assessee has shown Rs. 3,12,66,909/- as sundry creditors in its balance sheet. The Id AO asked assessee to submit the details of creditors along with address and confirmations. The assessee submitted the list of creditors along with their addresses. No confirmations were filed by the assessee. Subsequently, notices u/s 133(6) of the Act were issued to 9 creditors parties. In respect of 2 parties, notices were returned undelivered. In respect of 2 parties, no reply was received from the parties. Accordingly, the assessee vide order sheet entry dated 02.12.2016 was directed to submit confirmations from the 5 parties. The assessee could not produce the confirmations from these creditors during the assessment proceedings. The Id AO tabulated the list of those 5 parties and observed that the amounts credited in their accounts during the year in the sum of Rs. 1,80,55,733/- to be added as unexplained cash credit u/s 68 of the Act.

5. Before the Id CIT(A), the assessee furnished PAN together with the name and address of these 5 creditors. The assessee also submitted that these are trade creditors and from whom purchases have been made by the assessee and merely because the suppliers does not respond to the notice u/s 133(6) of the Act before of the Id AO, the purchase made by the assessee cannot be doubted. The assessee also furnished the details of payments made in respect of these disputed sundry creditors and provided the confirmations from them together with the reconciliation of the balance outstanding. The Id CIT(A) called for a remand report from

the Id AO. In the remand report, the Id AO accepted the contentions of the assessee in respect of 4 parties except Kamdhenu Foods Ltd. Despite that, the Id CIT(A) concluded that these evidences were not submitted by the assessee during the assessment proceedings and upheld the additions made by the Id AO in the total sum of Rs. 1,80,55,733/- u/s 68 of the Act.

6. At the outset, the addition made in the sum of Rs. 1,80,55,733/- represent purchases made by the assessee from 5 parties. In respect of purchases, only debit entry was made by the assessee and hence the provisions of section 68 of the Act per se cannot be made applicable for the same. However, the sales made by the assessee out of disputed purchases have been accepted. It is not the case of the revenue that purchases were made outside the books. Accordingly, the addition made on account of purchases made u/s 68 is hereby deleted.

7. Ground No. 3 raised by the assessee is challenging the addition made in the sum of Rs. 70,61,904/- u/s 41(1) of the Act on account of sundry creditors.

8. We have heard the rival submissions and perused the material available on record. This issue is an offshoot of the earlier ground adjudicated hereinabove. The Id AO in respect of the opening balance of sundry creditors amounting to Rs. 70,61,904/- treated the same as cessation of liability and brought it to tax u/s 41(1) of the Act. The Id AO considered the opening balance of the following parties and made an addition of Rs. 70,61,904/- u/s 41(1) of the Act as under:-

| | | |
|----|--------------------------|----------------|
| 1. | Sher-i-Punjab Trading Co | Rs. 9,41,750/- |
| 2. | Sahil Chemicals | 4,55,963/- |
| 3. | Kamdhenu Chemicals | 2,31,286/- |
| 4. | Kawaralal & Co Chemicals | 14,26,675 |
| | Total | 70,61,904 |

9. The assessee submitted that in respect of Kamdhenu Foods Ltd, the Id AO had taken opening balance wrongly in the sum of Rs. 21,06,410/- as against the debit opening balance of (-) Rs 3,52,890/-. The assessee also filed confirmation from all these parties where the balance duly tallied except Sahil Chemicals where the closing balance shown by assessee of Rs. 13,03,645/- whereas confirmations showed a sum of Rs. 11,76,122/-. The assessee duly filed the reconciliation of the same before the Id CIT(A) which is reproduced in page 8 of his order. It was also clarified that Kamdhenu Foods Ltd has two units – one at Sonipat and other at Delhi. The assessee purchased commodities from Sonipat and supplied the material to Kamdhenu Delhi. Hence, there is opening credit balance of Rs. 21,06,410/- with Kamdhenu Sonipat and opening debit balance with Kamdhenu Delhi of Rs. 24,58,600/- thereby resulting in net debit balance of Rs. 3,52,890/- which fact is also confirmed by Kamdhenu in its confirmation. The assessee also furnished the details of payments made to the sundry creditors to prove that there was no cession of liability warranting any addition u/s 41(1) of the Act. The Id CIT(A) however, did not heed to the contention of the assessee and upheld the addition.

10. We find that the assessee had continued to show these sundry creditors in its balance sheet which reflect acknowledgement of debt due by the assessee to these sundry creditors. Hence, the liabilities does not cease to exist. Accordingly, the provision of Section 41(1) of the Act does

not even apply in the facts of the instant case. Further the confirmations were given by the assessee which fact is also mentioned in the Id CIT(A) order together with the payment details thereon. All these facts have been ignored by the Id CIT(A) while dismissing the ground. Hence, we have no hesitation to delete the addition made u/s 41(1) of the Act in the facts and circumstances of the instant case. Accordingly ground No. 3 raised by the assessee is allowed.

11. Ground No. 4 raised by the assessee is challenging the disallowance of commission expenditure of Rs. 12,34,420/- u/s 37(1) of the Act.

12. We have heard the rival submissions and perused the material available on record. The assessee had claimed a sum of Rs. 19,80,360/- towards commission on sales paid to various parties. The assessee submitted the list of persons together with their addresses to whom commission was paid. Notice u/s 133(6) of the Act was issued to 6 parties by the Id AO, out of which, 2 were returned undelivered and 2 parties did not respond to the notices. Since, no confirmation was provided from 4 parties, the Id AO proceeded to disallow the commission paid to the following 4 parties as not genuine and disallowed a sum of Rs. 12,34,420/- as under:-

| | Name of the party | Amount |
|----|---------------------|-----------|
| 1. | Naresh Chand Sharma | 4,75,020 |
| 2. | Jyotish Kumar Jha | 40,000 |
| 3. | Monika Wadhi | 4,98,650 |
| 4. | Ajay Malhotra | 2,20,750 |
| | Total amount | 12,34,420 |

13. Out of 4 parties, the assessee filed confirmation from 3 parties and only in respect of Jyotish Kumar Jha confirmation was not available. The assessee submitted that payments were made to these selling agents by cheque after due deduction of tax at source. However, the Id CIT(A) did not agree with the contentions of the assessee and upheld the disallowance of commission. We find except the commission payment of Rs. 40,000/-, the assessee could file the entire confirmation from all the parties which is evident from the order of the Id CIT(A) in page 11 of his order thereby proving the genuineness of the commission payment to the lower authorities. Hence, we direct the Id AO to restrict the disallowance to the extent of Rs. 40,000/- and delete the remaining sum of Rs. 11,94,420/- on account of commission. Accordingly, ground No. 4 raised by assessee is partly allowed.

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

Order pronounced in the open court on 25/07/2025.

-Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

-Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER

Dated: 25/07/2025
A K Keot

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

ASSISTANT REGISTRAR
ITAT, New Delhi