IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Yogesh Kumar US, Judicial Member

ITA No. 4327/Del/2016 : Asstt. Year : 2012-13

ACIT, Circle-50(1), New Delhi	Vs	Al Nasir Agro Foods, SF-3, Western Chambers, 7A/42, W.E.A. Karol Bagh, New Delhi-110005
(APPELLANT)		**(RESPONDENT)**
PAN No. AAOFA8242N		

Assessee by : Sh. Ranjan Chopra, CA
Revenue by : Sh. Kanav Bali, Sr. DR

Date of Hearing: 01.03.2023		**Date of Pronouncement: 23.05.2023**

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the Revenue against the order of ld. CIT(A)-17, New Delhi dated 03.06.2016.

2. Following grounds have been raised by the Revenue:

"(1) The Ld CIT(A) has erred in deleting the addition of Rs. 4,95,25,264/- on account of bogus sundry creditors. The Ld CIT(A) has erred in not considering the facts that in absence of any tangible evidence of the creditors, it is very difficult to accept that the goods were in fact purchased on credit. Reliance can be placed in this regard in the case of ITO vs ZAZSONS Exports Ltd. (LKO).

(2) The Ld. CIT(A) has erred in ignoring the various facts of the case that the assessee has inflate the sundry creditors in the garb of sec.40A(3.) read with rule 6DD(e)(ii) of the Act including purchases and unverifiable stock register etc. This is very much

possible that the payment we made in cash from undisclosed sources but such payment was not accounted for and creditors were shown. The assessee has made total payment in cash for purchase. It is important to note that the assessee is making 100% sale to its sister concern and making profit thereupon and hence it becomes all the more necessary to check the inflation in disguise of sundry creditors.

(3) The Ld. CIT(A) has erred in co-relating the subsequent years with the AY 2012-13 with regard to sundry creditors as principle of "Res Judicata" not applicable in income tax proceedings as every assessment year is a separate proceedings.

(4) The Ld. CIT(A) has erred in not considering the fact that its claim was not questioned in subsequent years does not entitle the assessee to contend that the law should not be applied during the earlier AY. Reliance can be placed in this regard in the case of CIT vs. Seshasayee Industries Ltd. (Mad) 242 ITR 691.

(5) The Ld. CIT(A) has erred in not considering the facts that the assessee was unable to submit even a single shred of proper bills/PAN/address of the creditors and vouchers of the purchase made on credit during assessment proceedings.

(6) The Ld. CIT(A) has erred in not considering the fact that the assessee was unable to justify the purchase price of the raw meat in absence of the any proper bills of the creditors."

3. The assessee is a firm and engaged in the business of trading and manufacturing of raw and frozen buffalo meat. The assessee declared its income from business and profession. The assessee filed return of income on 01.10.2012 declaring an income of Rs.29,79,360/-.

Disallowance of Bogus Sundry Creditors:

4. The facts of the case are that the assessee has shown sundry creditors towards purchase of raw meat of Rs.4,95,25,264/- as on 31.03.2012.

5. The AO asked the assessee to submit evidence/proof of the raw meat purchased, transportation bills, ledger account of purchase and of creditors alongwith list of sundry creditors etc. Further, the assessee has provided list of around 400 sundry creditors having name and amount written on three pages only without any proof/evidence/bills of purchase. But the assessee even after repeated opportunity could not produce address of these creditors so that notices u/s 133(6)/summons could be issued to confirm the genuineness of creditors. The assessee also did not produce PAN of the creditors to confirm their identity. In absence of PANs even creditworthiness of creditors could not be verified. The assessee accepted that payments were made in cash from "Raw meat control A/c". ARs contention that cash payment to the parties for purchasing raw meat is exempt under rule 60DD(e)(ii) of Income-tax Rules, 1962 was not found to be tenable by the AO as to claim exemption following conditions should be fulfilled by the assessee:

1) Declaration from person receiving payment that he is a producer of meat
2) Confirmation that payment otherwise than by account payee cheque/draft was made on his insistence and
3) A further confirmation from a veterinary doctor certifying that person specified in the certificate is producer of meat and that slaughtering was done under his supervision.

6. The AO held that the assessee did not fulfill any of the conditions as mentioned above and could not prove that parties from whom they were purchasing raw meat were the real producer of meat. Genuineness of transactions, in absence of bank detail or raw meat selling parties could not be verified. The AO held that the appellant could not furnish address, PAN and other- documentary evidence of the creditors and could not produce any of the creditors. The AO held that the books of account were neither complete nor reliable since no stock register, goods inward register, goods outward register is being maintained by the appellant on regular basis as the appellant could not produce a single purchase order placed before the parties from whom meat was purchased, which would have contained any details as to quantity of meat, type of meat and rates paid to them. During the year relevant to the A.Y. 2012-13, the assessee had purchased raw-meat amounting to Rs.112.67 Crores from the sundry meat suppliers then processed the raw-meat and sold to its associate concern for a sum of Rs. 120.96 Crores.

7. Arguing against the observation of the ld. CIT(A) differentiating between the trade creditors and loan creditors the ld. DR relied on the judgment of Hon'ble Karnataka High Court in the case of Shri P. M. Abdulla Vs. ITO in ITA Nos. 719 & 803/2009 vide order dated 09.06.2015 wherein it was held that, *the assessment order would also indicate that in respect of the sundry creditors as reflected in the balance sheet of the assessee was not proved by the assessee though sufficient opportunity was granted. The order of the assessing officer does not indicate about any explanation having called for by the assessing officer from the assessee and such explanation having been not accepted so as to treat the same as income of*

the assessee for such financial year. However it requires to be noticed from the order of the tribunal that after analyzing the case laws it has been held that section 68 read with section 69C can be invoked in respect of sundry creditors which are not proved by the assessee before the assessing officer. As such we are of the considered view that the principles contained in section 68 as well as section 69C would be squarely applicable to sundry creditors in case of a trader, as obtained in the facts of the present case. Infact, credit purchases are nothing but expenditure and if sundry credits are not proved by the assessee addition can be made by the assessing officer by resorting to section 69C. Accordingly substantial question of law No.3 is being answered in favour of the revenue."

8. We are in agreement with the submission of the ld. DR on the issue of addition of sundry creditors u/s 68/69C. In the instant case, we are dealing with whether the sundry creditors or infact genuine or bogus.

9. We have gone through the reasons given by the ld. CIT(A) while deleting the addition viz.

- The assessee has purchased raw meat of worth Rs.112.67 Cr. from the meat supplier which has been sold for Rs.120.96 Cr. and the net gain has been duly disclosed.
- The payment to raw-meat suppliers have been made duly complying with the provisions of sec 40A(3) read with rule 6DD(e)(ii).
- During the course of the assessment proceedings, the Assessing Officer vide order sheet entry dt. Oct 15th 2014 had asked them to file names & addresses of Sundry Creditors above Rs. 5 Lacs. The required list giving names & addresses of parties above Rs. 5 Lacs was duly provided during the course of asstt proceedings.

- The payments to all these suppliers have been made and there were no outstanding dues of the suppliers.
- The appellant was maintaining complete books of accounts i.e. cash book, ledger, stock register & the bills & vouchers as necessitated by the nature of business.
- The accounts of the appellant are also regularly audited u/s 44AB of the Income Tax Act. Complete books of accounts & bills & vouchers were produced & test checked by the AO himself as per the record.
- The Assessing Officer has failed to pinpoint any discrepancy in the details filed and books of accounts & bills & vouchers produced during the course of assessment proceedings.
- The raw meat has been purchase in normal course of business. As per the trade practice no written purchase order is compared & all the orders are verbal and the delivery is received at the weighing counters of the plant of the appellant where the meat is weighed & quality is checked and the weighment slip is issued to the supplier.
- The insistence of the assessee to produce the sundry creditors on 23rd March 2015 and completing assessment on 30.03.2015 hardly gave any time to the assessee to produce the creditors who are really in unorganized sector and is not practical in the peculiar nature of the business.
- No defects in the books of accounts have been found out and there is no dispute about the quantity and the amount of the sale and hence disputing the purchase is an antithesis.

10. Having gone through the facts of the case, arguments of the parties, we hold that the allegation of the revenue that the sundry creditors are bogus has not been proved and hence, we decline to interfere with the well reasoned order of the ld. CIT(A). All the grounds are treated as adjudicated.

11. In the result, the appeal of the Revenue is dismissed.

Order Pronounced in the Open Court on 23/05/2023.

Sd/-

(Yogesh Kumar US)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 23/05/2023
Subodh Kumar, Sr. PS
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR