

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

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 3535/DEL/2016 ( A.Y 2011-12)**

DCIT Circle 11(1) New Delhi  <b>(APPELLANT)</b>	Vs	Hind Industries Ltd. A-1, Phase-1, Okhla Industrial Area New Delhi AAACH0870N <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. H. K. Chaudhary, CIT DR</b>
<b>Respondent by</b>	<b>Sh. M. P. Rastogi, Adv</b>

<b>Date of Hearing</b>	<b>19.02.2020</b>
<b>Date of Pronouncement</b>	<b>18 .03.2020</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the Revenue against the order dated 04/03/2016 passed by CIT(A)-16, New Delhi for Assessment Year 2011-12.

2. The grounds of appeal are as under:-

1. *Whether on the facts and the circumstances of the case, Ld.CIT(A) was correct in deleting the disallowance of Rs. 1,64,54,752/- made on account u/s 14A r.w.r 8D?*

2. *Whether on the facts and the circumstances of the case, Ld.CIT(A) was correct in deleting the addition of Rs. 79,13,46,369/- u/s 69C of the I.T Act, 1961 ignoring the fact that the purchases were not genuine and all the notices u/s 133(6) issued to parties were returned undelivered.?*

3. The assessee is engaged in the business of marketing of manufactured fertilizers and retailed intermediate products as well as export of frozen and fresh meat. Assessee filed its return of Income on 29.09.2011 declaring an income of Rs. 4,93,25,680/-. The Assessing Officer made disallowance of Commission to Managing Director to the extent of Rs. 2,81,405/-. The Assessing Officer further made disallowance of Rs. 79,13,46,369/- on account of unverifiable & unexplained cash purchases under Section 69C of the Income Tax Act, 1961. The Assessing Officer also made disallowance of Rs. 1,64,54,752/- towards applicability of Section 14A read with Rule 8D.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT (A). The CIT (A) allowed the appeal of the assessee.

5. As regards to Ground No. 1, the Ld. DR submitted that the Assessing Officer has rightly made disallowance of Rs. 164,54,752/- towards applicability of Section 14A read with Rule 8D. As regards to Ground No. 2, the Ld. DR submitted that as mentioned by the Assessing Officer in para 4, purchases of Rs.79,13,46,369 were found to be not supported by any vouchers, challan or documentary evidence. The Ld. DR submitted that notices u/s 133(6) was issued to all the 26 parties and in all the cases, notices u/s 133(6) were returned back with postal remarks "No such person" is available at the given addresses. The assessee was duly confronted with the above facts. Thereafter, some details were filed by the assessee. It was observed by the Assessing Officer that there was difference in signatures on the payment slip and letters filed by the assessee. These differences are highlighted on pages 7 & 8 of the assessment order. Thus, additions u/s 69C of Rs.79,13,46,369 was made on account of bogus purchases. The Ld. DR further submitted that in earlier years, disallowances was made u/s 40A(3). Thus the CIT(A) has incorrectly deleted the addition relying upon past history of the assessee. The Ld. DR relied upon the following decisions:

❖ N. K. Proteins Ltd. Vs. CIT(A) (2017-TIOL-23-SC-IT)

- ❖ N. K. Proteins Ltd. Vs. CIT( 2016-TIOL-3166-H.C-AHM-IT)
- ❖ CIT(A) Vs. Arun Malhotra 47 taxmann.com 385 (Delhi) 2014 363 ITR 195
- ❖ Vijay Proteins Ltd. Vs. ACIT [2015] 58 taxmann.com 44 (Gujrat)
- ❖ CIT(A) Vs. Medica [2001] 117 Taxman 628 (Delhi)/[2001] 250 ITR 575 (Delhi)/[2001] 168 CTR 314 (Delhi)
- ❖ Prem Castings (P) Ltd. Vs. CIT(A) [2017] 88 taxmann.com 189 (Allahabad)
- ❖ Prem Castings (P) Ltd. Vs. CIT2018-TIOL-274-S.C-IT
- ❖ Konark Structural Engineering (P) Ltd. Vs. DCIT [2018] 90 taxmann.com 56 (Bombay)
- ❖ PCIT Vs. Birkam Singh [ ITA No. 55/2017] (Delhi)
- ❖ Sanjay Olicake Industries Vs. CIT(A) [ 2009] 316 ITR 274 (Gujrat)
- ❖ N. K. Industries Ltd. Vs. DCIT [2016] 72 taxmann. Com 289 (Gujrat)/[2017] 292 CTR 354 (Gujarat)

6. As regards to Ground No. 1, the Ld. AR submitted that the assessee has not received any exempt income during the year under consideration. As regards to Ground No. 2, the Ld. AR submitted that all the export receipts are credited in the bank accounts wherefrom the withdrawals were made for the disbursement of purchase and other expenses. During the year under consideration, the sales were to the tune of Rs. 138 crore in comparison to Rs.122 crore in preceding year. During the year under consideration, the purchases were amounting to Rs. 109 crore, out of which the purchases amounting to Rs.79.13 crores were made in cash from farmers and growers of animals. In the trade of meat, the growers/producers from whom the respondent-assessee used to purchase were illiterate having no permanent residence and do not maintain bank account. The Ld. AR submitted that basically they operate in a group under the name of an individual who heads the team and interacts with the assessee on behalf of himself and other

persons in the group. Till preceding year, the Assessing Officer disallowed the payments against purchases u/s 40A(3) of IT Act. However on appeal, the Tribunal deleted the disallowance made by the Assessing Officer on account of cash purchases after following Rule 6DD of IT Rules for Assessment Year 2003-04 to 2009-10. Appeal for Assessment Year 2010-11 is pending before the Tribunal. However, for the first time in Assessment Year 2011-12, the Assessing Officer has observed at page 9 of the assessment order that the cash purchases of the assessee are not verifiable and then treated the whole of the cash purchases as bogus and then made the addition of the corresponding amount of unverifiable cash purchases as unexplained expenditure in terms of Section 69C of IT Act. The CIT (Appeals) after noticing the past history of the case wherein the disallowances were made against the cash purchase u/s 40A(3) of IT Act, which were subsequently deleted by Tribunal, the learned CIT observed that in earlier years the Assessing Officer used to disallow the purchases to the extent of 20% of the total purchases on account of cash payment in violation of section 40A(3) of IT Act, but this year the Assessing Officer instead of applying the provision of Section 40A(3) has invoked the provisions of Section 69C of IT Act which implies that the Assessing Officer is not satisfied with the source of investment in purchases. The CIT (Appeals) thereafter observed that there are two issues:

- (i) the investment in purchase not expenditure, or
- (ii) the parties from whom the purchases are made are not genuine.

The Ld. AR submitted that the CIT (Appeals) observed that from the Assessment Order it appears that the Assessing Officer has mixed up two issues in one and his findings and his conclusions are not related. While making the disallowance, the Assessing Officer has laid much stress on the non-verification of parties from whom purchases have been made. Thereafter after following the Tribunal Mumbai Bench order in the case of Eagle Impex in

ITA No. 5697/Mum/2010 dated 22<sup>nd</sup> February 2013, wherein the Tribunal, after considering the fact that when the sales/exports are accepted by the Assessing Officer and the assessee has disclosed the quantitative tally also, it means that the assessee must have made purchases also, for which there is corresponding sales and once the sales have been accepted by the Assessing Officer, then it would be farfetched to perceive that such a huge quantity of purchases has not been made, has deleted the purchases amounting to Rs.79.13 crore. The Ld. AR submitted that before the Assessing Officer, the assessee has furnished from the profit & loss account and balance sheet and auditor's report along with tax audit report which includes the quantitative tally of the purchases of meat and exports thereof. The sales which are from exports have been accepted by the Assessing Officer. Such sales have been credited in the bank accounts wherefrom the withdrawals have been made for the payment of purchase and other expenses. It is not the case of the Assessing Officer that no sales have been made by the respondent-assessee. It is not the case of the Assessing Officer that the payments against the purchases have been made by the assessee out of the books of account and not shown in the books of account because it is only out of the total purchases claimed by the assessee, an amount of Rs.79.13 has been disallowed. The provision of Section 69C of IT Act is a discretionary provision and not mandatory provision. The Ld. AR relied upon the following decisions:

- i) Pr. CIT vs. Rama Shankar Yadav (2017) 85 taxmann.com 173 (All)
- ii) CIT vs. Smt. PK Noorjahan 123 ITR 3 (Kerala)
- iii) CIT vs. Smt. PK Noorjahan 237 ITR 570 (SC)

The Ld. AR submitted that if the assessee explains the source of payment and there is no dispute about the source of payment, then Section 69C of IT Act is not applicable. The Ld. AR relied upon the following decisions:

- i) Sajni Jewellers vs. DCIT 241 ITR 383 (Guj)
- ii) CIT vs. Golani Brothers 300 CTR 245 (Bom)

The Ld. AR further submitted that production of parties cannot be a ground for disallowance of all purchases when sales made of such parties were not disputed as held in case of Ganesh Das Piaralal Jain vs. ITO (2017) 82 taxmann.com 354 (Chandigarh Trib). The Ld. AR submitted that if the contention of the Assessing Officer is accepted and whole of the additions are made, then it means that 100% of the sales are subjected to tax without allowing any expenditure in relation thereto and it will give a distorted trading result. From the comparative chart, the Ld. AR pointed out that if whole of the purchases Rs.79.13 crores are added to the trading results, then the GP rate would be worked out @ 83.45% which is impractical in the trade. The Ld. AR submitted the comparative chart of G.P rates as under:

**HIND INDUSTRIES LTD**

**COMPARATIVE CHART OF GP RATES**

**G. P. RATIOS AND N. P. RATIOS**

<b>GROSS PROFIT RATIO</b>	<b>Financial Year</b>		
	2010-11	2009-10	2008-09
SALES	1,383,740,479	1,224,536,391	1,179,610,466
MAERIAL CONSUMED & MAN.EXPENSE	1,090,707,448	975,507,733	936,314,879
INCREASE/DECREASE			
CLSOING STOCK	70,389,451	49,230,130	48,350,244
GROSS PROFIT	363, 422,482	298,258,788	291,645,831

GROSS PROFIT RATIO	<u>26.26</u>	<u>24.36</u>	<u>24.72</u>
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**NET PROFIT RATIO**

<b>TOTAL INCOME</b>	<b>1,465,526,876</b>	<b>1,292,599,263</b>	<b>1,242,332,423</b>
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NET PROFIT BEFORE TAX	36,215,286	24,754,140	30,439,352
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NET PROFIT AFTER TAXATION	25,421,068	16,451,331	15,420,518
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NET PROFIT BEFORE TAX	2.62	2.02	2.58
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NET PROFIT AFTER TAX	1.84	1.34	1.31
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<b>ACCEPTED</b>	<b>ACCEPTED</b>	<b>ACCEPTED</b>
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AO

Purchases disallowed by AO	79,13,46,369
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Gross Profit would be worked out	115,47,68,851
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Gross Profit rate would be worked out	83.45%
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However, the fact remains that during the year under consideration, the GP rate has been disclosed by the assessee at a better rate in comparison to the preceding year. In the case of books/unverifiable purchases, the total purchases cannot be disallowed, more particularly when there is no doubt about the sales disclosed and in such cases, only the margin of profit can be added which has already been added by the respondent-assessee @ 26.26%.

The Ld. AR relied upon the following decisions:

- i) Pr. CIT vs. Mohammad Haji Adam & Co. ITA No. 1004/2016 dated 11.02.2019
- ii) Pr. CIT vs. Pinaki D. Panani ITA No. 1543/2017 dated 8.1.2020 (Bom)
- iii) Pr. CIT vs. Rishabdeo Techno Cable ITA No. 1330/2017 dated

10.2.2020 (Bom)

The Ld. AR submitted that the purchase of fish from fishermen who are illiterate men of limited means and not like a normal businessman - having no fixed place of business - highly unorganized business and not inclined to carry out trade through banking channels, no additions as held in case of Sanchita Marine Products vs. DCIT (2007) 15 SOT 290 (Mum). The Ld. AR further submitted that no sales can be made without purchases and hence cannot be a case of bogus purchases as held in case of Balaji Textile Industries Pvt. Ltd. vs. ITO 49 ITD 177 (Mum). The Ld. AR submitted that the case laws as relied by the Assessing Officer and the Ld. DR are distinct on facts and are not applicable to the facts of the assessee.

7. We have heard both the parties and perused the material available on record. As regards to Ground No. 1, the CIT (A) has given a categorical finding that there is no exempt income received by the assessee during the year under consideration. This fact was not disputed by the Revenue. Therefore, the CIT(A) has rightly deleted this disallowance in view of the Cheminvestment Ltd. 61 taxman.com 118 Delhi. Thus, Ground No. 1 of the Revenue's appeal is dismissed. As regards to Ground No. 2, it is pertinent to note that the sale of the assessee was never doubted by the Assessing Officer. As regards the purchase from the records as mentioned in the Assessment Order itself, was found that quantitative tally of purchases of meat and exports and the same was reflected in the credit column of the bank account of the assessee. It is not a case of the Assessing Officer that payments against purchases have been made by the assessee out of books of accounts. The contention of the Ld. DR are also not tenable as the assessee filed the details of the parties from whom purchases were made and the same is mentioned in the Assessment Order itself. The CIT(A) has also given categorical finding that only 20% of the purchases were disallowed on account of cash payment which was duly reflected in the books of account of the assessee. The case laws referred by the Ld. DR are factually not relevant in the present case and are distinguishable.

Thus, there is no need to interfere with the findings of the CIT(A). The appeal of the Revenue is dismissed.

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

**Order pronounced in the Open Court on 18<sup>th</sup> March, 2020.**

**Sd/-  
(N. K. BILLAIYA)  
ACCOUNTANT MEMBER**

**Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Dated: 18/03/2020  
R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	20.02.2020
Date on which the typed draft is placed before the dictating Member	20.02.2020
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	19.03.2020
Date on which the final order is uploaded on the website of ITAT	19.03.2020
Date on which the file goes to the Bench Clerk	19.03.2020
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	