

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
ALLAHABAD BENCH, ALLAHABAD  
(THROUGH VIRTUAL COURT)  
BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER  
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA Nos. 66 & 153/ALLD/2013  
Assessment Years: 2005-06 & 2009-10

M/s Bhola Food Products Private Ltd. Sahson, Allahabad,U.P.	v.	Joint Commissioner of Income Tax (OSD), Central Circle, Allahabad,U.P.
PAN:AACCB 2409D		
(Appellant)		(Respondent)

Appellant by:	Mr. Praveen Godbole, CA
Respondent by:	Mr. Debashish Chanda, CIT-DR
Date of hearing:	06.01.2021
Date of pronouncement:	09 .03. 2021

**ORDER**

**PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:**

These two appeals filed by the assessee, being ITA Nos. 66 & 153/Alld/2013 for assessment year's(ay's) : 2005-06 and 2009-10 respectively are directed against two separate appellate orders , firstly appellate order dated 21.11.2012 in appeal no. 499/JCIT/CC/Alld/11-12 passed by learned Commissioner of Income-tax (Appeals), Allahabad , U.P. (hereinafter called " the CIT(A)") for ay: 2005-06 and secondly appellate order dated 29.01.2013 passed by learned CIT(A) in appeal number 503/JCIT/CC/Alld/11-12 for ay: 2009-10. The appellate proceedings had arisen before ld. CIT(A) from separate assessment orders both dated 28.12.2011 for ay: 2005-06 and 2009-10 respectively, both passed u/s. 153A(b) of the Income Tax Act, 1961 (hereinafter called "the Act") by learned Assessing Officer(hereinafter called "

the AO”) . We have heard both these appeals through video conferencing mode through virtual court. Both these appeals were heard together and are disposed off through this common order.

2. The grounds of appeals raised by assessee in memo of appeals filed with Income-Tax Appellate Tribunal, Allahabad (hereinafter called “the tribunal”) for both the assessment year(s), reads as under:-

**ITA No. 66/Alld/2013-Assessment Year 2005-06**

- “1. *That in any view of the matter order passed under Section 153A(b) of the Income Tax Act is without jurisdiction and by such order the income determined by the assessing officer is highly objectionable and incorrect and her action as partly confirmed by the Commissioner of Income Tax (Appeal) is unjustified and illegal.*
2. *That in any view of the matter the action under Section 132(1) of the Income Tax Act in consequence to which the notice issued under Section 153A of the act is without any incriminating material or any undisclosed income found during the course of the search the block assessments made determining the income at Rs. 1,13,46,700/- as against the returned income of Rs. 12,44,150/- is illegal, arbitrary and against the provisions of the Income Tax Act hence such order passed is nullify.*
3. *That in any view of the matter disallowances of the expenses of Rs. 14,77,400/- made by the assessing officer and confirmed by the Commissioner of Income Tax (Appeals) is highly unjustified as the expenditure is supported by the vouchers and recorded in books in regular course, hence the allegation of the two lower authorities with regard to nature of the expenditure is totally unjustified as the expenditure was exclusively for business purposes only, hence the addition as made by the assessing officer and confirmed by the Commissioner of Income Tax (Appeals) is incorrect and unwarranted.*
4. *That in any view of the matter observations of the Commissioner of Income Tax (Appeal) in para 9.2 of his order are totally incorrect and contrary to the actual facts of the issue hence the addition maintained by the Commissioner of Income Tax (Appeal) is incorrect and unwarranted.*
5. *That in any view of the matter while passing the order the learned Commissioner of Income Tax (Appeals) totally failed to consider the facts of the case, paper book filed and arguments advanced and the total relief prayed for has been negated and a very small relief has been considered to be allowed by ignoring the judicial norms which is highly unjustified and incorrect.*

6. *That in any view of the matter the interest charged under provisions of various sections of the Income Tax Act is unjustified and illegal in the facts and circumstances of the case.*
7. *That in any view of the matter the appellant reserves his right to take any further ground before hearing of the appeal.”*

**ITA No. 153/Alld/2013-Assessment Year 2009-10**

1. *That in any view of the matter assessment order dated 28.12.2011 passed u/s 153A(b) of the income tax act and vide which income as determined at Rs. 3,15,17,675.00 is highly unjustified and incorrect in the facts and circumstances of the case and the entire observations, findings and allegation in the order for making the additions are totally false and incorrect.*
2. *That in any view of the matter facts of the annexure A-5 found and seized in the course of search was not properly considered and even reconciliation furnished by the appellant was not taken into accounts in judicious manner hence the addition made is unjustified and unwarranted and the findings and observations of the assessing officer for making the additions are absolutely incorrect and contrary to the actual facts of the case,*
3. *That in any view of the matter undue / unnecessary weightage has been given to the seized annexure A-5 based on which a profit of Rs.3,15,17,675.00 as made by the assessing officer and a part of the same i.e. Rs. 1,79,15,749.00 as maintained by the Commissioner of Income Tax (Appeals) is highly unjustified and the reasons recorded for maintaining the part of the addition are incorrect and contrary to the actual facts of the case hence the same is liable to be deleted.*
4. *That in any view of the matter allegation of the Commissioner of Income Tax (Appeals) that the appellant understated the closing stock to the extent of Rs.1,79,15,749.00 is highly unjustified and incorrect because the appellant is maintaining complete books of accounts and proviso to section 145(3) of the income tax act was not invoked hence the maintenance of a part of the addition by-the learned Commissioner of Income Tax (Appeals) is unjustified and illegal.*
5. *That in any view of the matter the addition of Rs. 3,15,17,675.00 has been made by the assessing officer based on her own wishes and presumptions and this fact has been accepted by the Commissioner of Income Tax (Appeals) also in his order but in his observation the learned Commissioner of Income Tax (Appeals) also maintained a part of the addition of Rs. 1,79,15,749.00 based on irrelevant consideration of the fact which is unjustified and wrong and hence the same is liable to be deleted.*
6. *That in any view of the matter interest as charged under different sections of the income tax act is highly unjustified in the facts and circumstances.*

7. *That in any view of the matter the appellant reserves his right to take any fresh ground of appeal before hearing of the appeal."*

3. First, we shall take up appeal of the assessee for ay: 2005-06. The brief facts of the case are that the assessee is engaged in manufacturing, producing and processing of Masalas (spices) and other food products. There was a search and seizure operations carried on by Revenue u/s. 132 of the Act on 27.08.2009 in the business and residential premises of the group cases of Kesarwani Zarda Bhandar, Sahson, Allahabad and its partners and Directors. The assessee company is a sister concern of M/s Kesarwani Zarda Bhandar. The notices u/s. 153A of the Act was issued by AO to assessee on 07.07.2010 which was duly served on the Director of the company on 11.02.2010. The assessee in compliance thereof to aforesaid notice, filed return of income on 18.10.2020 disclosing income of Rs. 12,44,150/- . Thereafter, notices u/s. 143(2) of the 1961 Act was issued by AO to the assessee on 19.10.2010 which was duly served on the assessee. Notices u/s. 142(1) were also issued by AO to assessee from time to time. The assessee through its counsel appeared before the AO and filed written submissions during the course of assessment proceedings. During the course of search and seizure operations conducted by Revenue u/s 132(1) of the Act, no books of accounts were found. However, books of accounts were produced by assessee before the AO during the course of assessment proceedings, which were perused and examined by the AO.

3.2 In the grounds of appeal raised by the assessee before us, the assessee has challenged the legality and validity of the assessment framed by AO against the assessee u/s 153A of the 1961 Act, as in view of the assessee no incriminating material or any undisclosed income was found during the course of search operations conducted by Revenue against the assessee on 27.08.2009 u/s 132(1) of the 1961 Act, but however, before us no contention were raised by ld. Counsel for the assessee challenging the validity and illegality of the assessment framed pursuant to search on

the ground that no incriminating material or undisclosed income was found during the course of search operations. We have observed from assessment order passed by AO that several additions were made based on material /documents seized by Revenue during the course of search and seizure operations conducted by Revenue , u/s 132(1) of the 1961 Act on 27.08.2009. Thus , we dismiss Grounds No. 1 and 2 raised by assessee in memo of appeal filed with the tribunal. We order accordingly.

4. The assessee has vide ground number 3 , 4 and 5 raised the contention on the merits of the issue which is a solitary issue raised before us, in which claim is made that the assessee has made a provision for Rs.14,77,400/- which was debited to the Profit & Loss account for the year consideration towards the provision for expenses towards scheme for sale promotion carried on by the assessee. The ld. Counsel for the assessee contended before the Bench that both the authorities below have rejected the contentions of the assessee although the liability for the expenses were incurred @ 6% on total sales as per sale promotion scheme of the assessee in the year under consideration, and accordingly provision for sale promotion expenses were made in the books of account for liability for expenses incurred in this year itself (viz. ay: 2005-06) , although payments for sale promotion scheme of sales were made in the next year . The ledger account for the subsequent year was produced before us showing that payments towards purchasing gifts as per sale promotion scheme was made in subsequent year, which ledger is placed in PB at pages 32 to 39. It was submitted by ld. Counsel for the assessee before the Bench that the AO treated these expenses as bogus expenses , while ld. CIT(A) has treated the same as contingent and provisions not made properly as per the sales promotion scheme. It was submitted that these expenses were disclosed in the audited financial statements , which are enclosed in the paper book filed by assessee at page 40-56. Our attention was drawn to page 49/pb wherein provision for scheme expenses to the tune of Rs.14,77,400/- are reflected. Further , our attention was drawn to page 54/pb , which is schedule of

indirect expenses for the year under consideration , wherein the scheme expenses of Rs. 14,77,400/- are reflected. It was submitted by Id. Counsel for the assessee that details of scheme were filed before Id. CIT(A), but the same is not been filed before the tribunal.

5. The Id. CIT-DR submitted that these are contingent liabilities/expenses and there was no scientific basis adopted by assessee for making the provision @ 6% of the total sales, and the Assessing Officer has made the addition during the year and consequently these expenses were not verified in the next year. It was submitted that the sales promotion scheme provided for sales target to be achieved and the gifts are payable only on achievement of sales targets and estimation of sale promotion expenses at the flat rate of 6% is not correct , which is not as per scheme and prayers were made to upheld the disallowance. In the alternative, it was submitted by Id. CIT-DR before the Bench that in case if the disallowance of these provision for scheme expenses are not upheld by tribunal, then in that case these provision for scheme expenses claimed by assessee requires verification by the AO and the issue may be restored back to the file of the AO for verification and fresh adjudication .

6. We have considered rival contentions and perused the material available on record. We have observed that the assessee is engaged in manufacturing, producing and processing of Masalas (spices) and other food products. There was a search and seizure operations carried on by Revenue u/s. 132(1) of the 1961 Act on 27.08.2009 in the business and residential premises of the group cases of Kesarwani Zarda Bhandar, Sahson, Allahabad and its partners and Directors. The assessee company is a sister concern of M/s Kesarwani Zarda Bhandar. During the course of search and seizure operations conducted by Revenue against the assessee on 27.08.2009 u/s 132(1) of the 1961 Act, the Revenue , inter-alia, seized Annexure LP-2, in which at page number 12 is a trial balance ending on 31.03.2005, and there was no entry of Scheme Promotion Expenses of Rs. 14,77,400/- in the said trial balance, while as per

audited financial statements for the year ended 31.03.2005, the assessee has claimed Scheme Expenses to the tune of Rs. 14,77,400/- under the head 'Indirect Expenses' in the audited P&L account prepared by it. The assessee had termed the said seized documents as dumb/rough document. The assessee did not produce any details and vouchers before the AO and the said expenditure was treated by AO as not having been incurred and bogus expenses being claimed by the assessee. The assessee had preferred first appeal before Id. CIT(A) and it was claimed by assessee before Id. CIT(A) that these provisions for sale promotion scheme are made towards liability for expenses which was estimated @6% of sales to cover the liability incurred on account of sales promotion scheme run by the assessee. The copy of scheme for lucky draw and target incentive was furnished before Id. CIT(A). The Id. CIT(A) observed that the assessee has claimed to have made provision for expenditure by passing accounting entry on 31.03.2005 in its books of accounts for financial year 2004-05 and it is claimed by assessee that the amount was paid in subsequent financial year. The Id. CIT(A) rejected the contentions of the assessee by holding that the said amount is estimated as per assessee's version. The Id. CIT(A) further held that sale promotion scheme provided that gifts were payable only if targets were achieved and there was a lucky draw for the determination of the payees of the gifts. The Id. CIT(A) observed that the scheme included providing of various gifts contingent upon attaining definite targets. The Id. CIT(A) observed that as per the scheme, the gifts are not payable to every buyer of the product of the company. Further, it was observed that the scheme provided giving of various gifts, the prices of which may vary. The Id. CIT(A) observed that estimation of incentive at the flat rate of 6% of total sales is not in consonance with the scheme. The Id. CIT(A) observed that the assessee has to examine various claims of the buyers who will become eligible for gifts owing to attainment of targets. The assessee has made provision for expenses @ 6% of sales towards the sale promotion scheme carried out by the assessee, which as per Id. CIT(A) reflects that the assessee is not sure about liability. The Id. CIT(A) held that

the liability created by assessee @6% of sales towards sale promotion expenses is not justifiable at all. The Id. CIT(A) further observed the said liability is paid in subsequent year which is not examined by AO. The Id. CIT(A) held that the said liability is contingent in nature and not allowable as per provisions of Section 37(1) of the 1961 Act. The Id. CIT(A) held that the assessee has failed to substantiate that the liability created was payable during the year in terms of principles of mercantile system of accounting. Thus, the Id. CIT(A) rejected the claim of the assessee and confirmed the additions as were made by the AO. The copy of scheme stated to have been filed before the Id. CIT(A) , has not been filed by assessee before the Tribunal. The assessee has made provisions towards sales promotion expenses to the tune of Rs. 14,77,400/- in its audited books of account for the financial year 2004-05 based on the contentions that these are crystalized liability towards sales promotion expenses based on sales promotion scheme conducted by assessee. The said expenses did not found mentioned in the seized trial balance of the assessee for the financial year ended 31.03.2005, which was found and seized by Revenue during the course of search operations conducted by Revenue u/s 132(1) of the 1961 Act on 27.08.2009. The amount was paid/spent in the subsequent year and the details are provided by way of ledger account of the subsequent year. We have observed from the audited balance sheet filed by the assessee that sales for the year ended 31.03.2004 were to the tune of Rs.10,31,363.50 which had increased substantially to Rs.2,47,27,380.01 during the year under consideration . There was no sales promotion scheme conducted during the preceding year , as is emerging from P&L account and it is the first year when such a sale promotion scheme was conducted by assessee. The sale has increased manifold in this year vis-à-vis preceding year, and it is the claim of the assessee that the assessee is running a sales promotion scheme for which provision was made to the tune @ 6% of total sales and it is claimed that these are actual expenses incurred during the year for which liability got crystalized during the year under consideration, although payment of these sales promotion scheme expenses by



way of gift was paid in subsequent year and, and provision is made on estimated basis. We have observed that the authorities below have disbelieved contention of the assessee and disallowed the expenses . In our considered view, it is for the businessman to arrange their affairs and not for tax authorities to decide the manner in which businesses are run , unless malice is at writ large on the part of the tax-payer to defraud revenue with an intent to evade taxes . Thus, the expenses which are genuine and bonafide expenses incurred wholly and exclusively in connection with the business of the tax-payer are to be allowed as business deduction while computing income chargeable to tax, keeping in view mandate of provision of Section 37(1) of the Act . The authorities below have not verified the claim of the assessee as to the genuineness and bonafide of the claim of sale promotion expenses as the AO disallowed the same on the grounds that these are bogus expenses while Id. CIT(A) held the same to be contingent and also that the provision is not properly made in terms of scheme of sales promotion of the assessee. The assessee has not brought on record working of sales promotion expenses payable to various buyers , meeting of targets by buyers and liability crystalized as per scheme run by assessee. The assessee has also not brought on record sales promotion scheme conducted by it before the AO, nor Id. CIT(A) remanded the matter to the file of the AO for seeking remand report from AO as the sale promotion scheme was filed for the first time before Id. CIT(A) as additional evidences. In our considered view keeping in view totality of facts and circumstances of the case and in the interest of justice and fair play, the matter needs to be restored back to the file of the Assessing Officer for fresh/denovo consideration of the issue on merit in accordance with law. The assessee has claimed these expenses in its book of accounts as business expenses , and deduction of these sales promotion expenses from the income is claimed and hence primary onus is on the assessee to prove that they are genuine and bonafide expenses which are incurred wholly and exclusively for the purpose of business of the assessee, thus satisfying the mandate of Section 37(1) of the 1961 Act. The assessee is directed to submit all

relevant details/documents before the AO during the course of denovo assessment proceedings before the AO for determination of this issue. Needless to say that the AO shall provide proper and adequate opportunity of being heard to the assessee in accordance with principles of natural justice in accordance with law. The AO shall admit evidences filed by the assessee in its defense in set aside proceedings and the same shall be adjudicated by AO on merits in accordance with law. Accordingly, the appeal of the assessee on this issue is allowed for statistical purposes. We order accordingly.

**ITA No. 153/ALLD/2013**  
**Assessment Year: 2009-10**

7. The solitary addition has been made in this year on account of difference in the amounts reflected in the material seized during the course of search and seizure operation carried out by Revenue against the assessee u/s 132(1) of the 1961 Act on 27.08.2009, with that of the audited financial statements prepared by the assessee for the financial year ended 31.03.2009. There was also a simultaneous survey operation carried on by Revenue against Chartered Accountant, Shri Sanjay Gupta u/s 133A of the 1961 Act on 27.08.2009. These seized material are the extract of tally accounts which were seized from its unit of the assessee at Kanpur and the amounts reflected therein were tallied with the amounts reflected in the audited financial statements for the financial year ended 31.03.2009 and the profit as was reflected in the seized accounts were adopted by the AO while ld. CIT(A) was pleased to confirm additions for differential in the closing stock, thus the ld. CIT(A) was pleased to grant part relief and confirm the addition to tune of Rs. 1,79,15,749/- owing to differences in closing stock. The appeal filed by Revenue with tribunal was dismissed to low tax effect and hence we are seized of the assessee's appeal and the amount confirmed by ld. CIT(A). The ld. CIT(A) has observed that the assessee is not able to substantiate the claim of reconciliation submitted by it before ld. CIT(A). Further, the ld. CIT(A) rejected the

contentions of the assessee that tally software wrongly picked the entries. The Id. CIT(A) also rejected the contention of the assessee that entries for raw material, consumable , packing material etc. were not posted in the books of Kanpur Branch. The Id. CIT(A) also observed that the assessee had failed to produce stock register to demonstrate the consumption of raw materials, consumables, packing material etc. but not booked in the balance sheet, as the assessee failed to produce any evidence in support of its contentions. The search and seizure operation was carried on by Revenue against the assessee u/s 132(1) of the 1961 Act on 27.08.2009, while audited accounts were prepared on 05.09.2009. It is not uncommon that while finalizing the audited financial statements, year end adjustment entries are processed to reflect the true and fair view of the accounts in accordance with provisions of the Companies Act, Income-tax Act and other applicable statutes, such as making year end entries for depreciation, income tax, or to adjust for reconciliation of bank accounts, consolidation of various units/branches and eliminating of inter-unit/offices contra entries . It is also observed that assessee has claimed that the consumption entries were not posted in the tally accounts at the time when search operations took place which led to the differences in the balances of the stock. It is also claimed that the assessee has units/offices/branches at Kanpur and/or Allahabad and this trial balance which is extracted is only of Kanpur unit and later on compilation were made and consumption entries were posted. Thus, once the assessee has Head office, branches and units at different locations, the assessee's audited financial statements shall be prepared in consolidated form after taking into financials of all the units and offices, and it is not permissible for AO to solely depend upon Kanpur Branch account to ascertain income chargeable to tax , unless it is proven that either no expenses were incurred at other locations or no income were earned at other location , or they consisted bogus entries to defraud Revenue. The onus is on the assessee to prove that the expenses incurred at various locations were incurred wholly and exclusively for the purposes of the business of the assessee and that they satisfy the mandate of

Section 37(1) of the 1961 Act and , on the other hand the onus is on the AO to prove that these expenses are incurred with malice to defraud the Revenue . Same is the case with income. However, we have observed that the assessee has not produced stock register before the authorities below. The assessee is claiming the expenses while computing income chargeable to tax and the onus is on the assessee to prove that these are genuine and bona fide expenses incurred wholly and exclusively for the purposes of the business of the assessee. We have also observed that the assessee is registered with Central Excise Department and is also covered under VAT. In our considered view keeping in view totality of facts and circumstances of the case and in the interest of justice and fair play, the matter needs to be restored back to the file of the Assessing Officer for fresh/denovo consideration of the issue on merit in accordance with law. The assessee has claimed these expenses towards raw material, consumables , packing material etc. in its book of accounts as business expenses , and deduction of these expenses from the income is claimed and hence primary onus is on the assessee to prove that they are genuine and bonafide expenses which are incurred wholly and exclusively for the purpose of business of the assessee, thus satisfying the mandate of Section 37(1) of the 1961 Act, and the closing stock truly reflected the stock actually held by assessee at the year end. The assessee is directed to submit all relevant details/documents including unit wise accounts and also consolidated accounts to reconcile the differentials , stock records , excise records, VAT records etc. before the AO during the course of denovo assessment proceedings for determination of this issue on merit in accordance with law and for computing income chargeable to tax in accordance with provisions of the 1961 Act. Thus, we are remitting this matter back to file of the Assessing Officer with a direction to assessee to produce all the relevant records including unit wise accounts reconciling with consolidated accounts, stock records , excise records , VAT records etc. before the Assessing Officer to prove that the expenses were incurred wholly and exclusively for the purpose of business of the assessee and they are bona fide and genuine expenses

incurred for the business of the assessee and the stock truly reflected the stock held by assessee at a given point of time . The assessee is required to prove consumption of raw material , packing material, consumables etc. viz.-a-viz. production/manufacturing and also keeping in view its past track record in the earlier year of consumption of material viz.-a-viz. production/ manufacturing carried on by it in the earlier years. Needless to say that the AO shall provide proper and adequate opportunity of being heard to the assessee in accordance with principles of natural justice in accordance with law. The AO shall admit evidences filed by the assessee in its defense in set aside proceedings and the same shall be adjudicated by AO on merits in accordance with law. Accordingly, the appeal of the assessee on this issue is allowed for statistical purposes. We order accordingly.

8. In the result, both the appeals filed by assessee for ay: 2005-06 and 2009-10 are allowed for statistical purposes.

Order to be pronounced on 09/ 03 /2021 in Open Court at Allahabad.

Sd/-

[VIJAY PAL RAO]  
JUDICIAL MEMBER

sd/-

[RAMIT KOCHAR]  
ACCOUNTANT MEMBER

DATED: 09/03/2021

Aks/-

Copy forwarded to:

1. Appellant –Bhola Foods Products Private Limited
2. Respondent –JIT(OSD),Allahabad, U.P.
3. CIT(A) –Allahabad, U.P.
4. CIT
5. DR -

By order

