

**IN THE INCOME TAX APPELLATE TRIBUNAL, JABALPUR BENCH,  
JABALPUR (SMC)**

BEFORE SH. SANJAY ARORA, HON'BLE ACCOUNTANT MEMBER

ITA No.255/JAB/2018  
Assessment Year: 2013-14

Gopal Agrawal HUF, Betul, (M.P.)  [PAN: AADHG 8828B]	vs.	Income Tax Officer, Ward – Betul, Betul (M.P.)
(Appellant)		(Respondent)

Appellant by	Sh. H.S. Modh Adv.
Respondent by	Smt. Swati Agarwal, Sr. DR
Date of hearing	08/10/2021
Date of pronouncement	22/10/2021

**ORDER**

Per Sanjay Arora, AM

This is an Appeal by the Assessee directed against the Order by the Commissioner of Income Tax (Appeals)-1, Bhopal ('CIT(A)' for short) dated 31.10.2018, dismissing the assessee's appeal contesting its' assessment under section 143(3) of the Income Tax Act, 1961 ('the Act' hereinafter) for the Assessment Year (AY) 2013-14 vide order dated 26/2/2016.

2.1 Opening the arguments for and on behalf of the assessee, it was submitted by Shri Modh, the Id. counsel for the assessee, that the only issue arising and raised in appeal is the disallowance of loss of Rs.10,43,274 suffered by the assessee on account of 'Sauda Settlement'. The same stands disallowed for want of substantiation, for which he would take the Bench through the assessment and the first appellate order. The assessee, a wholesale trader in food grains, oilseeds, etc. makes several bargains in the course of his business, which are entered into on oral basis. An oral contract is equally valid in law. As the

contract for supply of wheat was, due to adverse price movement, reversed, again orally, the resulting loss was charged by the buyer, M/s. Sanwaria Agro Oils Ltd., Itarsi (SAOL) – with whom the assessee has a regular account (PB pg. 4), which agrees with the assessee's account in its' books (PB pg. 5), thereto. There is therefore nothing to mistrust the assessee when it says so. The basis of the journal entry booking the said loss on 31/03/2013 by the assessee, is a debit note raised by SAOL, a limited company, on 31/03/2013 (PB pg. 7), which stands further confirmed by it as accounted as its' income for the current year (PB pg. 6). No defect has been otherwise pointed out by the assessing authority in the assessee's accounts. The assessee has thus produced all the relevant material as well as the necessary explanation/s in the matter. There is therefore no question of having not furnished any bills and vouchers in respect of the relevant transaction, as stated by the Revenue authorities. There is further no basis to suggest, as do both by the Assessing Officer (AO) and the Id. CIT(A), of the assessee having not accounted for the said amount as its' income for the current or earlier year/s.

2.2 The Id. Sr. DR, Mrs. Agarwal, would submit that the assessee has completely failed to explain the nature of the transaction/s stated to result in a loss, much less substantiate it, and which is the principal reason for the non-acceptance thereof, adverting to the findings by the Revenue authorities, whose orders, in the relevant parts, stood already read out during the course of the assessee's pleadings.

2.3 At this stage, it was enquired by the Bench from Shri Modh about the (availability of the) relevant details of the transaction/s inasmuch as none stood furnished at any stage. That is, what was sold; at what rate; where and by whom was the delivery to be made; the obtaining market rate/s at the time of the contract as well as at the time the goods were to be delivered, etc., and if there was any material, viz. Sauda Book, contract notes, etc., to substantiate the same.

This is as this only would give some clarity on, as well as the basis of, the transaction, which had not even been explained, i.e., as he seeks to do now before the Tribunal for the first time, albeit without any details whatsoever, even as the debit note, unnumbered, raised by SAOL, states of details accompanying the same, while none have been brought on record. *He would reply in the negative.* And, further, take the Bench through the ledger account of transport expenses (PB pg. 32), in the assessee's accounts, reflecting a gross expense of Rs.56.25 lac towards railway and local freight and reloading charges, of which Rs.34.71 lac stands recovered from the parties to whom the goods had been supplied directly, so that only the balance Rs.21.54 lacs stands charged by the assessee to its profit & loss account (PB pg. 21). Of Rs.34.71 lac, Rs.9.93 lac was stated to pertain to SAOL and, accordingly, debited by the assessee thereto. The assessee, on being asked, was stated by him to be entitled to a commission/ brokerage on the said supply. When further enquired about the absence of such income in the assessee's operating statement (PB pg. 21), he would state the same to be by way of a difference in the purchase and sale rate. But was, however, unable to explain the absence of any entry in its respect in the ledger account of SAOL (PB pgs. 4 & 5). Rather, as it appears, in that case SAOL would make the payment for the purchase directly to the supplier in respect of this supply, while none has been shown to be, and at any stage. Besides, that would only mean that the transaction/s had indeed matured, and not reversed, as stated earlier in explanation of the sauda (bargain) settlement. He was unable to explain the same during hearing.

3. I have heard the parties, and perused the material on record.

3.1 My first observation in the matter is that the disallowance being in respect of a specific loss or expenditure, made on the basis of non-acceptance of the assessee's explanation *qua* the same, the fact of the assessee's accounts being audited, or its' book results having been, by inference, otherwise accepted by

the Revenue, is of no consequence in-so-far as the said disallowance is concerned, which is to be adjudged on its merits.

3.2 My second observation in the matter is that, much less substantiated, even the nature of the transaction has not been explained at any stage and, despite abundant opportunity to do so. No doubt oral contracts are entered into in the business world, as over phone. However, these are duly recorded immediately thereafter, if not almost simultaneously, and, further, confirmed through exchange of notes, as over fax, e-mails, etc. This is the regular trade practice, adopted uniformly, as without it, it will be well nigh impossible to execute the same; the contracts being forward contracts and the rates volatile, changing every day; rather, even during the course of the day itself. These cannot be acted upon or trusted to be so on the basis of memory, a faculty different for different people and, besides, eliminates any controversy that may arise. How would, for example, in case of any difference, the matter be resolved? Reducing the oral contract in writing by some contemporaneous material is thus a trade imperative. The concerned broker or commission agent/s, being more than one where the two sides are represented by different ones, do this on behalf of their principals. Why, only a couple of decades ago, i.e., before the advent of electronic exchanges, share markets operated in this manner, with *saudas* translated into contract notes immediately thereafter and got confirmed/countersigned by the opposing broker on the trading floor itself. The transaction in the instant case is without any relevant details. In fact, the question of adverse price movement would not normally arise as forward contracts are hedged by a similar forward contract. A trader would not leave a trade open, exposing himself to market risk. In fact, he cannot quote without obtaining a similar forward contract. How would a trader quote a price for, or even honor, his contract, i.e. without such a contract, which becomes a necessity? This also contradicts the payment of freight by SAOL, which only means, as also observed during hearing, that the supply stands made thereto. *Why else, one may ask, would it bear the same?*

Further, if the supply is made, as stated, directly by the assessee, implying that the delivery was ex-works (godown), SAOL would yet be obliged to pay the cost to the assessee, who in turn would pay its' cost to its' supplier. Where the assessee acted as, as again stated, a broker, he would be entitled to a positive income in the form of commission/brokerage from SAOL, the buyer. Rather, the same only means that the transaction has been, contrary to what stands stated, completed. The explanation further contradicts its earlier explanation of the loss as on account of reversal due to adverse market condition, not shown, with the assessee bearing the difference due to price increase. This explanation thus contradicts the assessee's earlier explanation of the impugned loss as on account of reversal of a trade due to adverse market condition, not shown, with the assessee bearing the difference due to the price increase. In fact, the credit notes for freight (Rs.9.93 lac) debited by the assessee to the account of SAOL, are by Sanwaria Foods Limited (PB pg. 34), for Rs.8.66 lacs, and one, Surya Trading Corporation (PB pg. 33), for Rs.1.27 lacs, and not by SAOL. *Why, then, had the railway freight been debited to SAOL?* Sh. Modh was at loss to explain. The assessee, thus, ties itself in knots in trying to explain the transaction/s. There is another aspect of the matter, also referred to in their orders by the Revenue authorities. That is, apart from debits in respect of two different parties (at Rs.9.93 lacs) to the account of SAOL (i.e., in the books of the assessee), which stands responded to by it, there are no trade transactions between the assessee and the SAOL, which has a credit balance of Rs.250.80 lacs as on 31/03/2013, the year-end. The entire account comprises sums received from, and paid back to, SAOL, so that the balance represents monies received from it. *On what account, one may ask?* To no answer, again, by Sh. Modh. Why would any person pay such huge sums to another, the assessee in the instant case, i.e. without business consideration, which is clearly missing, or at least not apparent, much less explained. In the context of the instant case, the

relative quantum of this sum is that it finances almost the whole of the stock-in-trade of the assessee, being at Rs. 268.74 lacs as on 31/3/2013 (PB pg. 20).

3.3 Further still, without prejudice, even if one were to ignore all this, and go by what stands stated by Sh. Modh earlier, i.e., of it being an open-ended transaction, which was not honored and, accordingly, obligation under the contract of supply discharged by bearing the loss – on the basis of current market rate, the same, apart from being *sans* any details and evidence, would be a speculative transaction u/s. 43(5). The assessee shall not be, because of the transaction being open-ended and, in any case, unsupported by any materials, saved by section 43(5)(a). The same, being carried in the regular course of the assessee's business, shall qualify for being set off only against the profits of a speculative business which, in terms of *Explanation 2* to section 28, is to be regarded as a separate and distinct business. There is, thus, no question of it being set off against the assessee's other, regular business of trading in food grains and oilseeds or, as stated before me, of commission agent/broker. This, further, would also result in non-explanation of the recovery of railway freight by the assessee therefrom. This also explains of this being stated as in the alternative, even as, as afore-stated, it is also without any details or material in support.

3.4 Again, much less several, as claimed, no similar bargain stands shown as executed during the year, or even in the past, even as the same does not detract from the fact that the bargain under reference is wholly unproved, so that the factum of other bargains would not impact positively on the allowance of this transaction. Such transactions would, similarly, result in either a gain or a loss to the assessee, also demonstrating the manner in which the same is accounted for.

4. There is, to speak in nutshell, complete opaqueness about the nature and truth of the transaction/s between the assessee and SAOL, including the

impugned credit of Rs.10,43,274 thereto on 31/03/2013. The same thus cannot be regarded as a business loss and, in any case, is not available for set off against the business profit from its' wholesale business. The same stands rightly disallowed by the Revenue. I decide accordingly.

5. In the result, the assessee's appeal is dismissed.

*Order pronounced in the Open Court on October 22, 2021*

Sd/-  
(Sanjay Arora)  
Accountant Member

Dated: 22/10/2021

\*Singh

Copy of the Order forwarded to:

1. The Appellant: Gopal Agrawal (HUF), Prop.: M/s. Shri Shyam Trading Company, Betul Ganj, Betul - 460002 (M.P.)
2. The Respondent: Income Tax Officer, Ward – Betul, Betul - 460002 (M.P.)
3. The Pr. CIT-1, Bhopal
4. The CIT(Appeal)-1, Bhopal
5. The Sr. DR, ITAT, Jabalpur
6. Guard File

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