आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL , 'A' BENCH, CHENNAI

श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष

BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER

आयकर अपील सं./**I.T.A.Nos.192 & 193/Chny/2019**

निर्धारण वर्ष / Assessment Years: 2012-13 & 2013-14)

Shri A.M. Manickam, 67, Thandvan Kuppam Colony, Auto Gate, Neyveli – 607 802.	Vs	The ACIT, Cuddalore – 607 001.
PAN: AAAFA9888L		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri D. Anand, Advocate
प्रत्यर्थी की ओर से/Respondent by	:	Shri AR.V. Sreenivasan, JCIT

सुनवाई की तारीख/Date of hearing	:	23.04.2019
घोषणा की तारीख /Date of Pronouncement	:	27.05.2019

आदेश / O R D E R

Per A. Mohan Alankamony, AM:-

These appeals by the assessee are directed against the order passed by the learned Commissioner of Income Tax (Appeals)-Puducherry, dated 22.12.2017 & 19.02.2018 in ITA No.45/CIT(A)-PDY/2015-16 & 64/CIT(A)-PDY/2016-17 for the assessment years 2012-13 & 2013-14 both passed U/s.250(6) r.w.s. 143(3) of the Act.

2. These appeals were filed by the assessee with a delay of 340 days & 283 days for the assessment years 2012-13 & 2013-14 respectively. The assessee has filed a condonation petition stating

that he was of the bonafide belief that he had handed over the appellate orders and the requisite documents to his Chartered Accountant for filing the appeal, however, it was realized subsequently that by oversight the same was not handed over to the Chartered Accountant. Upon realizing the lapse immediately the entire documents were handed over to the Chartered Accountant in order to file the appeal due to which the delay had occurred. Hence it was pleaded that the delay of 340 days & 283 days in filing the appeals may be condoned. The Ld. DR strongly objected to the submission of the Ld. AR. After hearing both sides, though we do not appreciate the lapse on the part of the assessee to file the appeals within the stipulated period, in the interest of justice, we hereby condone the delay of 340 days & 283 days in filing the appeals and proceed to hear the cases on merits.

3. The assessee has raised six identical grounds in his appeals and the concise ground is reproduced herein below:-

3.1 Assessment Year 2012-13

(1) The Ld.CIT(A) erred in upholding the order of the Ld.AO who had disallowed the expenditure incurred towards oil and lubricants amounting to Rs.7,76,245/- for not producing proper vouchers.

(2) The Ld.CIT(A) erred in upholding the order of the Ld.AO who had disallowed the expenditure incurred towards purchase of diesel by way of cash exceeding Rs.20,000/- aggregating to Rs.23,27,936/- invoking provisions of Section 40A(3) of the Act.

3.2 Assessment Year 2013-14

(1) The Ld.CIT(A) erred in upholding the order of the Ld.AO who had disallowed various expenditures incurred by way of payment made in cash exceeding Rs.20,000/- aggregating to Rs.1,25,36,995/- invoking the provisions of Section 40A(3) of the Act.

4. The brief facts of the case are that the assessee is a firm engaged in civil contract work, filed its return of income for the assessment years 2012-13 & 2013-14 on 29.09.2012 & 01.10.2013 admitting total income of Rs.17,30,101/- & Rs.15,07,400/- respectively. Initially the returns were processed U/s.143(1) of the Act and subsequently the cases were selected for scrutiny under CASS and notice U/s.143(2) of the Act were issued on 13.08.2013 & 15.09.2014 for the assessment years 2012-13 & 2013-14 respectively. Finally assessment orders were passed U/s.143(3) of the Act on 30.03.2015 for the assessment year 2012-13 wherein the Ld.AO made addition of

Rs.7,76,245/- towards expenditure incurred which is not supported by proper vouchers and Rs.23,27,936/- towards diesel expenses incurred by way of cash payment exceeding Rs.20,000/- invoking the provisions of Section 40A(3) of the Act. The Ld.AO further made disallowance U/s.40A(3) of the Act towards cash payment made exceeding Rs.20,000/- with respect to expenditure incurred for the assessment year 2013-14 for Rs.1,33,66,607/-. Vide order dated 30.03.2016.

5. At the outset, on perusing the orders of Ld.AO for both the assessment years, it is evident for the assessment year 2012-13, addition is made by the Ld.AO amounting to Rs.7,76,245/- due to inadequate vouchers and U/ 40A(3) Rs.23,27,936/-, and Rs.1,33,66,607/- for the assessment year 2012-13 and 2013-14 respectively. For the assessment year 2012-13, the Ld.CIT(A) upheld the order of the Ld.AO after obtaining a remand report wherein it was stated by the Ld.AO that the assessee has accepted the addition. For the assessment year 2013-14, the Ld.CIT(A) had sustained the addition made by the Ld.AO for Rs.1,25,36,995/- toward expenditure incurred for purchase of diesel thereby granted a relief of Rs.8,29,412/-.

6. Further on perusing the facts of the case, we do not find much merit in the orders of the Ld. Revenue authorities. The assessee firm is engaged in the business of civil constructions as petty contractor. There

is no finding by the Revenue that the assessee has declared less income than what he has earned. The Ld. Revenue authorities have also not made a finding that the income arising out of similar business is much more than what is declared by the assessee in his books of accounts and therefore the books of accounts maintained by the assessee without proper vouchers is not reliable. It is also not the case of the Revenue that the assessee has suppressed his profit or indulged in any transactions evading tax or generating unaccounted cash. The only grievance of the Revenue is that certain vouchers were not available to substantiate the expenditure and the expenditure is incurred by way of payment made in cash exceeding Rs.20,000/-. In such circumstances, the proviso to section 40A(3) comes to the rescue of the assessee when the assessee incurs expenditure by way of cash due to business expediency and other relevant factors. Considering the fact that the assessee is a petty civil contractor procuring materials from unregulated market in a petty manner and since there is no finding by the Revenue that the assessee has suppressed his income or indulged in any transaction generating unaccounted money, we are of the considered view that the addition made in the hands of the assessee for Rs.7,76,245/- towards non-availability of vouchers, Rs.23,27,936/- U/s 40A(3) of the Act for the assessment year 2012-13 and Rs.1,25,36,995/- U/s 40A(3) of the Act for the assessment year 2013-14 is not warranted.

Therefore, we here by direct the Ld.AO to delete the same for both the assessment years. It is ordered accordingly.

7. In the result, both the appeals of the assessee are allowed.

Order pronounced on the 27th May, 2019 at Chennai.

Sd/-	Sd/-
(धुव्वुरु आर एल रेड्डी)	(ए. मोहन अलंकामणी)
(Duvvuru R.L Reddy)	(A. Mohan Alankamony)
न्यायिक सदस्य/Judicial Member	लेखा सदस्य/Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 27th May, 2019
RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant	2. प्रत्यर्थी/Respondent	3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT	5. विभागीय प्रतिनिधि/DR	6. गार्ड फाईल/GF