आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री आर. के. पांडा, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI R.K. PANDA, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No. 193/PN/2015
निर्धारण वर्ष / Assessment Year: 2010-11

Shri Dattatraya Shivaji Bandal,
Prop. Kailash Food Industries,
At Amrutwadi, Post – Pachwad,
Tal. – Wai, Distt. – Satara

PAN : AABPB8740K

.......अपीलार्थी / Appellant

बनाम / V/s.

Dy. Commissioner of Income Tax,
Satara Circle, Satara

......प्रत्यर्थी / Respondent

Assessee by : Shri M.K. Kulkarni
Revenue by : Shri B.C. Malakar

सुनवाई की तारीख / Date of Hearing : 06-07-2015
घोषणा की तारीख / Date of Pronouncement : 04-09-2015

आदेश / ORDER

PER VIKAS AWASTHY, JM :

The appeal has been filed by the assessee impugning the order of Commissioner of Income Tax (Appeals)-IV, Pune dated 17-12-2014 for the assessment year 2010-11. The assessee has raised following grounds in the appeal:

1) *On the facts and circumstances of the case and in law the Ld. CIT(A) was not justified in confirming the addition made by the A.O.*

Rs.1,31,01,987/- invoking provisions of S. 40A(3) of the Act especially when the appellant had not maintained any regular books of account and no direct cash payments were made when appellant consistently submitted that the payments were covered by Rule 6DD(K) of I. T. Rules 1962.

2) *On the facts and circumstances of the case and in law the disallowance made by A.0. of Rs.1,31,61,987/- and confirmed by CIT(A) is contrary to law and without jurisdiction. The same be quashed.*

3) *On the facts and circumstances of the case and in law the A.0. collected the information by issuing notices to many persons under section 133(6) of the Act which information was collected on the back of the assessee-appellant and used against him. There was serious contravention of the principles of natural justice which issue going to the root of the matter was ignored by the Ld. CIT(A). The order of the Ld. C1T(A) is vitiated in law. It be, therefore, set aside.*

4) *On the facts and circumstances of the case and in law the levy of interest u/s 234A, 234B and 234C is not justified.*

5) *The appellant craves to leave, add/amend or alter any of the above grounds of appeal.*

2. A perusal of the grounds would show that Ground Nos. 1 to 3 are directed against the addition of Rs.1,31,01,987/- u/s. 40A(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). Ground No. 4 is against the charging of interest u/s. 234A, 234B and 234C of the Act, whereas Ground No. 5 is general in nature.

3. The brief facts of the case are : The assessee is an individual and is engaged in the business of making pharsan, shev, wafers, chivda and other snacks. The assessee filed his return of income for the assessment year 2010-11 on 11-10-2010, declaring income of Rs.33,31,410/-. Survey action u/s. 133A was carried on the premises of the assessee on 25-02-2010. The assessee during the course of assessment proceedings vide letter dated 19-11-2012 informed the

Assessing Officer that no books of account are maintained for the period relevant to the assessment year 2010-11. However, the Assessing Officer discovered that the assessee in his profit and loss account has shown sales of Rs.3,46,11,731/-. In view of sales turnover exceeding Rs.40,00,000/- per annum, the assessee was required to maintain regular books of account in accordance with the provisions of section 44AA(2) and also should have got the accounts audited in accordance with the provisions of section 44AB. On verification of the documents impounded during survey, it was found that the assessee had made cash payments exceeding Rs.20,000/- for the purchases from a single party in a day during the relevant period. Majority of the payments were made in cash exceeding Rs.20,000/- to M/s. Lunkad Brothers, Pune. Apart from M/s. Lunkad Brothers, the assessee had also made cash payments to various other parties exceeding Rs.20,000/- for purchases in a single day. The Assessing Officer held that the payments have been made in violation of section 40A(3) and the payments made does not fall under any of the exceptions given in Rule 6DD of the Income Tax Rules. The Assessing Officer made addition of Rs.1,31,01,987/-, accordingly.

Aggrieved by the assessment order dated 19-03-2013, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) after analyzing the facts of the case, details of the cash payments made by the assessee and the explanation furnished for making such cash payments, held that the assessee has failed to establish that the payments by cash on regular basis were made under exceptional and unavoidable circumstances or out of business compulsions. The Commissioner of Income Tax (Appeals) upheld the findings of Assessing Officer and dismissed the appeal of the assessee. Now, the assessee is in second appeal before the Tribunal assailing the findings of the First Appellate Authority.

4. Shri M.K. Kulkarni appearing on behalf of the assessee submitted that the assessee has not maintained any books of account except the register which was impounded during the course of survey action. The assessee has already been penalized for default committed for non-maintenance of books of account u/s. 271A and non-audit of books of account u/s. 44AB. The statement of account supplied by the sellers of material would show that the transactions took place on weekly basis when the weekly bazaar was held at Amrutwadi i.e. the place of business of the assessee. That the representative of the suppliers of materials would visit the assessee on the weekly bazaar day, take order for supply of material for next week and collect the amount from the assessee for the material supplied in the earlier week. The representatives would collect the sale price of the material supplied in cash as the seller was not maintaining any bank account at or nearby the business place of the assessee. The payments in cash made by the assessee are covered by the provisions of Rule 6DD(k) of the Income Tax Rules. Since, the representatives of the seller would travel a long distance of about 90 kms from Pune to Amrutwadi to collect fresh orders for supply of material and payments for the materials supplied, the payments by cheque and/or draft etc. was not feasible. Therefore, such payments in cash were made out of business expediency and under exceptional and unavoidable circumstances. Since, the assessee had not maintained any regular books of account, the assessee had filed his return of income on estimate basis. The Assessing Officer accepted the sales figure of Rs.3,46,11,731/- and the net income

returned i.e. Rs.33,31,410/-. No other addition except u/s. 40A(3) was made. Thus, the estimated income computed by the assessee was accepted. In earlier assessment years i.e. assessment years 2007-08, 2008-09 and 2009-10 ad-hoc additions were made during the assessment proceedings u/s. 143(3) r.w.s. 147 but no disallowance u/s. 40A(3) was ever made. Therefore, disallowance u/s. 40A(3) is uncalled for in the impugned assessment year. To support his submissions, the ld. Counsel for the assessee placed reliance on the following decisions:

i. CIT Vs. Banwari Lal Banshidhar; 229 ITR 229 (All.).

ii. CIT Vs. Smt. Santosh Jain; 296 ITR 324 (P&H).

5. *Au contraire* Shri B.C. Malakar representing the Department vehemently defended the findings of Commissioner of Income Tax (Appeals) and prayed for dismissing the appeal of the assessee. The ld. DR submitted that the assessee was mainly dealing with M/s. Lunkad Brothers from Pune. The place of business of the assessee is only 90 kms from Pune. It is not the case of the assessee that the assessee is not having bank account or there is no bank at the place of business of the assessee or the supplier of the material. The assessee never approached M/s. Lunkad Brother or the other parties to whom cash payments were made to deal through proper banking channels. Explanation furnished by the assessee for making cash payments does not fall within any of the exceptions given in Rule 6DD of the Income Tax Rules. In support of his submission the ld. DR placed reliance on the decisions rendered in the case of S. Venkata Subba Rao Vs. CIT reported as 173 ITR 340 (A.P.) and in the case of T G Mutha Vs. ITO reported as 54 ITD 460 (Pune).

6. We have heard the submissions made by the representatives of rival sides and have perused the orders of the authorities below. The assessee in its appeal has primarily raised two issues:

i. Disallowance of Rs.1,31,01,987/- u/s. 40A(3) by rejecting the submissions of the assessee and ignoring the provisions of Rule 6DD(k) of the Income Tax Rules, 1962, and

ii. Levy of interest u/s. 234A, 234B and 234C of the Act.

7. The Commissioner of Income Tax (Appeals) in the order has given elaborate details of cash payments exceeding Rs.20,000/- made by the assessee in a single day to a single party. A perusal of the details show that the assessee has been dealing with various parties and the mode of transaction with them has been primarily in cash. It is an admitted fact that the assessee has a turnover of Rs.3,46,11,731/-. Despite the fact that the assessee is having such a huge turnover, the assessee is not maintaining books of account much less to say about the audit of accounts. A perusal of the materials available on record shows that the assessee is a recalcitrant and has scanty respect for the law of the land. The assessee has tried to take shelter of the exceptions provided under Rule 6DD(k) of the Act. For the sake of convenience the relevant extract of Rule 6DD(k) is reproduce as under:

> *"6DD. No disallowance under sub-section (3) of section 40A shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-section (3A) of section 40A where a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees in the cases and circumstances specified hereunder, namely: -*
> *xxxxxxxxxx*
> *xxxxxxxxxx*
> *(k) where the payment is made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person;"*

8. We are of the considered view that the assessee does not fall within the exception given in Clause (k) of Rule 6DD. It is not the case of the assessee that the assessee or the suppliers of the materials are not having bank account. The exceptions in Rule 6DD are provided to mitigate the situations where, either of the parties to the transaction does not have the benefit of banking facilities or are strained by some exceptional or unavoidable circumstances to deal in cash. Submissions of the ld. Counsel for the assessee that the cash payments were made to the authorised representative who would travel 90 kms for weekly bazzar to the place of assessee to collect orders and the payments of the material supplied is unsustainable. Travelling 90 kms to collect payment certainly cannot be an excuse to make payment in violation of the provisions of the Income Tax Act. As far as agents referred in Rule 6DD(k) are concerned, the authorised representatives of the supplier of material cannot be equated with the 'agents' referred to in Rule 6DD(k) of Income Tax Rules.

9. The ld. Counsel for the assessee has tried to draw support from the decisions rendered in the cases of CIT Vs. Banwari Lal Banshidhar (supra) and in the case of CIT Vs. Smt. Santosh Jain (supra). In the said cases the Hon'ble High Courts deleted the disallowance made u/s. 40A(3) on the ground that the income of the assessee was estimated by applying GP rate by rejecting the books of account of the assessee. The Hon'ble Allahabad High Court held that when gross profit rate is applied, it would take care of everything and there was no need for the Assessing Officer to make scrutiny of the amount incurred on the purchases by the assessee. The Hon'ble Punjab and Haryana High Court in the case of CIT Vs. Smt. Santosh Jain (supra) concurred with the view taken in the case of CIT Vs. Banwari Lal Banshidhar (supra).

We are of the view that the ratio laid down by the Hon'ble High Courts in the aforementioned cases would not apply in the facts and circumstances of the present case. The Assessing Officer had not made any addition by applying GP rate by rejecting the books of account of the assessee. It is the case of the assessee that no books of account are maintained. Further, except for the disallowance u/s. 40A(3) no addition has been made by the Assessing Officer in scrutiny assessment. The case of the assessee is entirely on a different footing and no benefit of the case laws relied upon by the ld. Counsel for the assessee can be given.

10. We concur with the findings of the Commissioner of Income Tax (Appeals). The impugned order is well reasoned and justified, no interference is warranted in the impugned order.

11. As far as charging of interest u/s. 234A, 234B and 234C is concerned, the same is mandatory and consequential (CIT Vs. Anjum M.H. Ghaswala; 252 ITR 1). Therefore, this ground of appeal is liable to be dismissed.

12. In the result, the appeal of the assessee is dismissed being devoid of any merit.

Order pronounced on Monday, the 04th day of September, 2015.

Sd/-	Sd/-
(आर. के. पांडा / R.K. Panda)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 04th September, 2015
RK

<u>आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :</u>

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-IV, Pune
4. आयकर आयुक्त / The CIT-III, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune