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

BEFORE MS. SUSHMA CHOWLA, JM AND
SHRI ANIL CHATURVEDI, AM

<u>आयकर अपील सं</u> / <u>ITA No. 845/PUN/2015</u>
<u>निर्धारण वर्ष</u> / <u>Assessment Year : 2010-11</u>

The Income Tax Officer,
Ward-1(3), C/o. Income Tax Office,
Old B.J. Market, Jalgaon,
Maharashtra – 425001.

………. अपीलार्थी / Appellant

<u>बनाम</u> v/s

Shri Vijay Rajkumar Agrawal,
Prop. Of Kirtiraj Foods,
Addl. Plot No.54, Ajantha Housing,
Society Choufully, Jalgaon.

………. प्रत्यर्थी / Respondent

PAN : AJHPA4444L.

अपीलार्थी की ओर से / Appellant by : Shri P.S. Naik
प्रत्यर्थी की ओर से / Respondent by : None

सुनवाई की तारीख / Date of Hearing : 19.06.2017		घोषणा की तारीख / Date of Pronouncement: 23.06.2017

<u>आदेश / ORDER</u>

<u>PER ANIL CHATURVEDI, AM :</u>

This appeal filed by the Revenue is emanating out of the order of Commissioner of Income Tax (A) – 2, Nashik dt.24.03.2015 for the assessment year 2010-11.

2. The relevant facts as culled out from the material on record are as under :-

2.1 Assessee is the Proprietor of Kirtiraj Foods and engaged in the business of trading in food-grains. Assessee filed his return of income for A.Y. 2010-11 on 17.09.2010 declaring total income of

Rs.1,81,317/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dt.21.06.2013 and the total income was determined at Rs.64,17,260/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.24.03.2015 in (appeal No.Nsk/CIT(A)-2/172/13-14), allowed the appeal of the assessee. Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal before us and has raised the following grounds.

> *"1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition of Rs.62,35,944/- on account of cash payment u/s 40A(3).*
>
> *2. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in not appreciating the fact that the addition was made on account of non genuineness and unproved creditors and not only on account of cash payment u/s 40A(3).*
>
> *3. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in granting the benefit of Rule 6DD of the IT Rules to the assessee whereas the creditors are not agriculturist.*
>
> *4. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in treating the creditors as agent and granted the benefit of Rule 6DD, thereby deleted the addition of Rs.62,35,944/-.*
>
> *The appellant prays that all the above addition being just and fair requires to be sustained.*
>
> *5. The appellant craves leave to add, alter, modify, delete amend any of the grounds, as per the circumstances of the case.*
>
> *6. The appellant prays leave to adduce such further evidence to substantiate its case as* the occasion may demand."

3. On the date of hearing, none appeared on behalf of the assessee nor any adjournment application was filed. Further the case file reveals that the notice for hearing which was sent to assessee through registered post was undelivered. The assessee has also not filed new address. We therefore proceed to decide the

appeal exparte-qua the assessee on the basis of material on record and after hearing the Ld.D.R.

4. During the course of assessment proceedings, on perusing the balance-sheet, AO noticed that out of list of sundry creditors the following three creditors were shown to have major outstanding :

1) Shri Ajay Shivaji Patil Rs.54,34,200/-
2) Shri Sonu Tatya Patil Rs.75,70,900/-
3) Shri Suresh Bhikulal Pagada Rs.36,85,500/-

In this regard, assessee was asked to file the name, address, confirmation and the account extracts as appearing in his book and the creditors' books. AO also issued summons u/s 131 of the Act to the aforesaid creditors. AO has noted that the summons were returned back undelivered by Postal Authorities. The assessee was thereafter asked to substantiate the claim which according to AO could not be substantiated by the assessee. AO on perusing the bank statement noticed that the payments to these creditors were made through bearer cheques and some payments in cash. He therefore concluded that three creditors were not genuine as assessee not proved their identity, genuineness of transaction and their creditworthiness. The payments that were made by bearer cheques and cash aggregating to Rs.62,35,944/- (The details of which are listed at page 7 of the assessment order) were disallowed by the AO u/s 40A(3) of the Act. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A).

Ld.CIT(A) after considering the submissions of the assessee, remand report of AO and assessee's reply to remand report decided the issue in favour of the assessee by holding as under :

> *9. I have carefully considered the facts of the case, assessment order, the appellant's submission and the AO's remand report. On perusal of the same, it has been noticed that the appellant had made payment in respect of purchase of grains otherwise than by account payee cheques or demand drafts. The appellant has claimed that he has made payments to farmers through Shri Ajay Shivaji Patil, Shri Sonu Tatya Patil and Shri Suresh Bhikulal Gujrathi and the payment is not disallowable u/s.40A(3) of the Act in view of exceptions provided in Rule 6DD(e) and Rule 6DD(k) and also in view of compelling circumstances in view of the decision of Gujrat High Court in the case of Anupam Tele Services Vs. ITO (Guj) (2014) 268 CTR 121 order dated 22/1/2014 (AY.2006-07 and Chennai Tribunal in the case of ACIT Vs. K.M. Vidyasagar (2014) 39 CCH 260 (Chen.Trib)*
>
> *9.1 From the assessment order, it has been noticed that the AO. has not accepted the contention of the appellant that the above mentioned 3 persons are group leaders of the farmers or agent of the appellant/farmers. The AO. has held in the concluding para as under:*
>
>> *"Considering the overall fact it is clear that the assessee could not substantiate the three creditors. The payment made by assessee are also by bearer cheques by contravention of section 40A(3) of the I.T.Act, 1961. The payment as detailed above made during the year amounting to Rs. 62,35,944/- are disallowed for the above reasons and added to the total income of the assessee. For the balance outstanding as on 31/3/2010, which is also made in cash/bearer cheque in the next financial year (A.Y.2011-12), the necessary action u/s 147 is being taken. The amount of Rs.62,35,944/- is treated as inaccurate particular furnished by assessee and penalty proceedings u/s.271(1)(c) of the I.T Act, 1961 initiated separately.*
>>
>> *Subject to the above, total income of the assessee is computed as under:*
>>
>> *Business/profession income as returned Rs. 1,81,317/-*
>> *Add:*
>> ***<u>Addition made on account of :</u>***
>> *Cash payment u/s. 40A(3) as discussed above Rs. 62,35,944/-"*
>
> *9.2 From the above para of the assessment order, it is evident that the A.O. has made addition u/s 40A(3) of the Act, observing that the appellant could not substantiate the 3 creditors. Therefore, it is implied that the A.O. has made disallowance u./s.40A(3) by treating the above mentioned 3 persons as traders or has treated the said 3 persons as non*

genuine entities.

9.3 If the 3 persons are treated as traders, then they had made cash payments to farmers by withdrawing the cash by bearer cheques issued by the appellant. In this regard, it has been noticed that the farmers are from rural area and most of them did not have bank accounts. Therefore, the farmers generally insisted for cash payment without exception. In the above circumstances, the payment to the traders, who made payments to farmers are to be considered as genuine. Further, in view of above compelling circumstances, the appellant has made payments by bearer cheques to the above mentioned 3 persons. The Hon'ble Supreme Court in the case of Attar Singh Gurumukh Singh Vs. ITO 191 ITR 667, held that provisions of section 40A(3) are not intended to restrict the business activity. The provisions of section 40A(3) and Rule 6DD are intended to regulate business transactions and to prevent the use of unaccounted money or reduce the chances to use black money for business transactions. In the case under appeal, no such circumstances existed. Though the above circumstances are not covered by exceptions specifically provided in Rule 6DD, considerations of business expediencies, etc. are not eliminated as the list of exemptions mentioned in Rule 6DD is not exhaustive and that rule must be interpreted liberally as laid down by Hon'ble Gujrat High Court in the case of Anupam Tele Services Vs. ITO (Guj) (2014) 268 CTR 121 order dated 22/1/2014 (A.Y.2006-07) and Chennai Tribunal in the case of ACIT Vs. K.M. Vidyasagar (2014) 39 CCH 260 (Chen.Trib). Therefore, in view of the ratio laid down by above mentioned decisions and the facts of the case under appeal, the disallowance u/s.40A(3) is not justified, even if the said 3 persons mentioned above are treated as traders.

9.4 If the said 3 persons mentioned above are treated as non genuine and non existing entities, then in such case it is implied that the payments by bearer cheques were withdrawn in cash by the appellant himself. It is also a fact that the appellant had sold food grains purchased from farmers and hence had made payment to farmers in cash. The said payment is in respect of food grains i.e. agricultural produce purchased from farmers. Therefore, no such disallowance u/s.40A(3) in such cases is justified, in view of exception provided in Rule 6DD(e)(i).

9.5 It has also been noticed that as mentioned in concluding para of the assessment order, the A.O. had reopened the assessment for A.Y.2011-12. The A.O. vide order u/s. 143(3) r.w.s. 147 dated 21/3/2014 had accepted the contentions raised by the appellant. As mentioned above, a sum of Rs.62,35,944/- was made by bearer cheques to the above named 3 persons by the appellant during the year under consideration, and such bearer cheques/cash payments to the said 3 persons amounted to Rs.1,66,90,600/- in the A.Y.2011-12. These payments of Rs.1,66,90,600/- included outstanding payments of the year under consideration. In other words, the same 3 persons are involved having identical transactions for both the years. The order for AYs 2010-11 and 2011-12 are also passed by the same Assessing Officer. In the assessment order for A.Y.2011-12, the A.O. had accepted that the *transactions and 3 parties mentioned in earlier paragraphs are genuine and no disallowance can be made u/s. 40A(3) in view of provisions Rules 6DD. The facts of the case under appeal are identical to the facts of the case for A.Y.2011-12."*

9.6 In view of the above facts and discussions, the disallowance u/s 40A(3) is not justified. The addition of Rs.62,35,944/- is therefore deleted. The AO is directed accordingly."

Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal before us.

5. Before us. Ld.D.R. supported the order of AO.

6. We heard the Ld.D.R. and perused the material on record. The issue in the present case is with respect to disallowance of expenses u/s 40A(3) of the Act. We find that Ld.CIT(A) after considering submissions of the assessee and the remand report has given a finding that the payments made were to farmers from rural areas and most of them did not have bank account and the payment to the traders, who made payment to the farmers are considered to be genuine. He further held that even if the payment to the three persons are considered to be traders, then also the disallowance u/s 40A(3) of the Act was not called for as the payment was under compelling circumstances. Ld.CIT(A) has further noted that even if the payment are three parties are treated as non-genuine and non-existing entities then since the payment was with respect to the purchase of food-grains which were purchased from farmers and in such a situation also the disallowance u/s 40A(3) of the Act was not justified in view of exceptions provided under Rule 6DD(e)(i). He has further noted that for A.Ys. 2010-11 and 2011-12 the orders which were passed

by AO u/s 143 r.w.s. 147 of the Act, the payments of the transactions with these three parties, which included the opening balances were held to be genuine and no disallowance was made u/s 40A(3) of the Act. He accordingly set aside the addition made by AO. Before us, Revenue has not placed any material on record to controvert the findings of Ld.CIT(A). In view of the aforesaid facts, we find no reason to interfere with the order of Ld.CIT(A) and **thus the grounds of Revenue are dismissed.**

7. **In the result, the appeal of the Revenue is dismissed.**

Order pronounced on 23rd day of June, 2017.

Sd/-	**Sd/-**
(**SUSHMA CHOWLA**)	(**ANIL CHATURVEDI**)
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

पुणे Pune; दिनांक Dated : 23rd June, 2017.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-II, Nashik.
4. CIT-II, Nashik.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" / DR, ITAT, "B" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

सहायक रजिस्ट्रार/ Assistant Registrar,
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.