

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

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

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिक सदस्यकेसमक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 2018/Mds/2015

निर्धारण वर्ष /Assessment year : 2010-2011

Shri. D. Tamilrajan,
Pappammalpuram,
Aundipatti Post,
Theni District,
Pin code 625 514.

Vs. The Joint Commissioner of
Income Tax,
Range I (i/c),
Madurai

[PAN AAYPT 8454B]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri. D. Anand, Advocate
: Shri. P. Radhakrishnan, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 30-05-2016

घोषणा की तारीख /Date of Pronouncement : 30-06-2016

आदेश / ORDER

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The appeal filed by the assessee is directed against order of the Commissioner of Income-tax (Appeals)-1, Madurai in ITA No.116/2013-14, dated 23.02.2015 for the assessment year 2010-2011

passed u/s.143(3) and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

2. There is a delay of 148 days in filing the appeal by the assessee. At the time of hearing the Id. Counsel has filed an affidavit explaining the reasons for delay and the Id. DR has no serious objections for condonation of delay. After hearing the submissions, we are satisfied with sufficient and reasonable cause for filing the appeal belatedly and we therefore condone the delay and admit the appeal for adjudication.

3. The assessee has raised the following grounds of appeal:-

'2.The learned Commissioner Of Income Tax (Appeals)-2, Madurai erred in law in disallowing a sum of Rs.21,87,851/- by invoking section 40A(3) of the Income Tax Act.

3. The learned Commissioner Of Income Tax (Appeals)-2 erred in law in not considering the business expediency and other factors including extent of banking facility before invoking section 40A(3) of the Income Tax Act.

4.The learned Commissioner Of Income Tax (Appeals)-2 ought to have seen that the appellant has discharged his primary onus both during the assessment proceedings and first appellate proceedings to demonstrate the fact that the cash payments made by the appellant fall under rule 6DD

5.The learned Commissioner Of Income Tax (Appeals)-2 erred in law In disallowing a sum of Rs.4,58,755/- under the expenses for tea, coffee, freight charges and diesel expenditure are not supported by vouchers.

6. The learned assessing officer as well as the first appellate authority failed to appreciate that the appellant is a civil contractor laying roads and constructing bridges in remote area and that it is practically impossible for the appellant to provide vouchers for expenses incurred towards tea, coffee,

freight charges and diesel expenditure

7. The learned Commissioner Of Income Tax (Appeals)-2 erred in law in disallowing expenses of ₹15,95,100/- incurred by the appellant on account of labour charges, jelly purchase, sand purchase and gravel purchase under the pretext that the vouchers are self-made and are incapable of independent verification.

8. The learned first appellate authority erred in law in drawing analogy between the appellants case to the case of the contractor who declares income on presumptive basis to justify the disallowance of expenses of Rs.15,95,100/- incurred by the appellant on account of labour charges, jelly purchase, sand purchase and gravel purchase.

4. The Brief facts of the case is that the assessee is a individual engaged in the business of Civil contract works and carrying on works in rural and remote areas in laying roads, constructing bridges and culverts and e-filed Return of income on 11.10.2010 with total income of ₹1,12,07,260/- and agricultural income of ₹9,42,750/- and the return was processed u/s.143(1) of the Act and rectified u/sec. 154 of the Act. Subsequently, the case was selected for scrutiny and notice u/s.143(2) was issued. In compliance to notice, the Id. Authorised Representative of assessee appeared from time to time and produced Books of account, bank statements, bills and vouchers. The Id. Assessing Officer verified Accounts, bills, vouchers and found that assessee has claimed expenditure of ₹21,87,851/- under various heads were cash exceeding ₹20,000/- was paid for each occasion and the Id. Assessing Officer issued letter to the assessee on violation of

provisions of Sec.40(A)(3) of the Act as cash expenditure incurred was more than ₹20,000/- on various dates referred at page 3 to 5 of the order. The Id. Authorised Representative of the assessee filed submissions that these cash payments pertaining to Civil contract works in rural areas and dependent on lorry Brokers for supply of sand and jelly and local suppliers always insist for cash payments. Due to time frame, the assessee is bound to complete the rural works within limitation period and it is a common practice to make cash payments as there are no adequate Banking facilities available in remote villages. The Id. Assessing Officer accepted the nature of the work of the assessee but alleged that the assessee firm being regular contractor and there is no necessity to make cash payment on various occasions and disallowed the claim. Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

4.1 In the appellate proceedings, the Id. Commissioner of Income Tax (Appeals) has confirmed the order of the Id. Assessing Officer. Aggrieved by the Commissioner of Income Tax (Appeals) order, the assessee assailed an appeal before Tribunal.

4.2 Before us, the Id. Authorised Representative submitted that the Id. CIT(A) erred in confirming the findings of the Id. Assessing

Officer and failure to consider the factors of banking facilities and cash payments fall within exception of Rule 6DD of the Act and prayed that the disallowance are not warranted as the local contractor always insist for cash payments. Further most of the vendors are illiterate and farmers who do not have bank account and assessee firm purchase jelly and sand from hawkers, farmers who are in the habit of supplying and selling the products at the work site of the assessee and moving from place to place and does not have any permanent place of business and Deal only on cash basis. For transactions of supply and undertaking of works in remote village is difficult task, further educating the suppliers for opening of bank account and make Bank payments is highly impractical. Considering time and place of works conducted in rural areas and further transactions take place during odd hours with lorry brokers and vendors and it is a regular phenomenon has to be faced by the assessee firm and due to Business exigencies and the cash payment transactions are unavoidable and some transactions also take place on public holiday, Saturday and Sunday. The assessee firm has been maintaining bank Balance at the time of incurring expenditure as per Books of account but because the recipient hawkers, vendors does not have bank accounts and question of issuing of cheques does not arise, apart from time limit of work stipulated and prayed for allowing the ground.

4.3 Contra, the Id. Departmental Representative relied on the orders of Commissioner of Income Tax (Appeals) and vehemently opposed the grounds.

4.4 We heard the rival submissions, perused the material on record. The contention of the Id. Authorised Representative that the assessee has to compulsory make cash payments due to Business exigencies and maximum transactions are entered with farmers, hawkers and lorry brokers for supply of jelly and sand in the remote areas who are illiterate people. Further, the commercial transactions with Bank is not appreciated by above suppliers and insist cash immediately and shall move from place to place. The assessee has considered business exigencies and such cash payments were to be made in a peculiar situations and were mandatorily insist cash. We perused the provisions of Sec. 40A(3) of the Act read as:-

‘Where the assessee incurs any expenditure in respect of which a payment of 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, no deduction shall be allowed in respect of such expenditure’.

and Rule 6DD and exception under Income Tax Rules

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 payment⁵⁹ 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 :—

(a) where the payment is made to—

- (i) the Reserve Bank of India or any banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);
- (ii) the State Bank of India or any subsidiary bank as defined in section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959);
- (iii) any co-operative bank or land mortgage bank;
- (iv) any primary agricultural credit society or any primary credit society as defined under section 56 of the Banking Regulation Act, 1949 (10 of 1949);
- (v) the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956);

(b) where the payment is made to the Government and, under the rules framed by it, such payment is required to be made in legal tender;

(c) where the payment is made by—

- (i) any letter of credit arrangements through a bank;
- (ii) a mail or telegraphic transfer through a bank;
- (iii) a book adjustment from any account in a bank to any other account in that or any other bank;
- (iv) a bill of exchange made payable only to a bank;
- (v) the use of electronic clearing system through a bank account;
- (vi) a credit card;
- (vii) a debit card.

Explanation.—For the purposes of this clause and clause (g), the term “bank” means any bank, banking company or society referred to in sub-clauses (i) to (iv) of clause (a) and includes any bank [not being a banking company⁶⁵ as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949)], whether incorporated or not, which is established outside India;

(d) where the payment is made by way of adjustment against the amount of any liability incurred by the payee for any goods supplied or services rendered by the assessee to such payee;

⁶(e) where the payment is made for the purchase of—

- (i) agricultural or forest produce; or
- (ii) the produce of animal husbandry (including livestock, meat, hides and skins) or dairy or poultry farming; or

- (iii) fish or fish products⁶⁸; or
- (iv) the products of horticulture or apiculture,
to the cultivator, grower or producer of such articles, produce or products;
- (f) where the payment is made for the purchase of the products manufactured or processed without the aid of power in a cottage industry, to the producer of such products;
- ⁶⁹(g) where the payment is made in a village or town, which on the date of such payment is not served by any bank, to any person who ordinarily resides, or is carrying on any business, profession or vocation, in any such village or town;
- (h) where any payment is made to an employee of the assessee or the heir of any such employee, on or in connection with the retirement, retrenchment, resignation, discharge or death of such employee, on account of gratuity, retrenchment compensation or similar terminal benefit and the aggregate of such sums payable to the employee or his heir does not exceed fifty thousand rupees;
- (i) where the payment is made by an assessee by way of salary to his employee after deducting the income-tax from salary in accordance with the provisions of section 192 of the Act, and when such employee—
 - (i) is temporarily posted for a continuous period of fifteen days or more in a place other than his normal place of duty or on a ship; and
 - (ii) does not maintain any account in any bank at such place or ship;
- ⁷⁰(j) where the payment was required to be made on a day on which the banks were closed either on account of holiday or strike;
- (k) where the payment is made by any person to his agent⁷¹ who is required to make payment in cash for goods or services on behalf of such person;
- (l) where the payment is made by an authorised dealer or a money changer against purchase of foreign currency or travellers cheques in the normal course of his business.

The payments to the hawkers and vendors by cash by the assessee firm other than account payee cheques was never doubted by the Revenue. The assessee firm is following prevailing business practice from earlier years. Further, provisions of Sec. 40A(3) of the Act must not be read in isolation or exclusion of Rule 6DD of Income Tax Rules, 1962. The section must be read alongwith Rule and on reading

together, it is very clear that provisions are not intended to restrict the business activities. The Id. Assessing Officer cannot restrict the Business of the assessee firm on application of the Rule 6DD, further provisions of Sec. 40A(3) of the Act empowers the Id. Assessing Officer to disallow deduction claimed as expenditure were payments are not by account payee cheque/draft. The Id. Assessing Officer should analysis the payments either by Crossed Cheque or Bank Draft and ascertain whether the payments are genuine considering business expediency, genuineness and bonafide peculiar transactions of the business. The assessee firm makes cash payments in the circumstances as per the intention of the vendors/supplier who transact on cash basis and no credit facility is available in the remote villages. So, considering the apparent facts and nature of business of the assessee being laying of roads, building bridges and culverts in the remote village and purchase of sand, jelly from the local vendors and lorry brokers who are illiterate and does not have permanent place of Business and also vendors and Hawkers deliver the sand, jelly at the working sites of assessee during odd hours in remote areas and we support our opinion with the decision of *Anupam Tele Services vs. ITO 366 ITR 122 (Guj)* and we set aside the order of the Commissioner of Income Tax (Appeals) and delete the addition made by the Id.

Assessing Officer on this ground. This ground of the assessee is allowed.

5 The second ground raised by the assessee is with regard to disallowance by the Id. Assessing Officer ₹4,58,755/- being expenses for tea, coffee, freight charges and diesel expenditure not supported by vouchers and confirmed by the Id. Assessing Officer.

5.1 The Id. Assessing Officer found that the assessee firm has incurred expenditure in the nature of tea, coffee, freight charges and diesel and could not produce any supporting evidence. It was submitted that expenses are incurred in the nature of labour welfare and fuel expenses incurred provided at working site in remote areas Due to moisture and dust the vouchers are tainted torn and worn out. The Id. Assessing Officer having not satisfied with the explanation made disallowance. Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals)

5.2 In the appellate proceedings, the Id. Authorised Representative explained that working system of the business on laying of roads and culvert in the remote areas and these expenses are compulsory incurred on labour and takes the characteristic of welfare measures. On comparing with the turnover of the contracts were contract receipt being ₹29.73 Crores, the disputed expenditure is

very negligible which work out to 0.15%. The Id. Commissioner of Income Tax (Appeals) has considered the submissions but due to agreed addition by the assessee, non availability of evidence and overlooked the working conditions of the labour at work site has confirmed the addition. Aggrieved by the Commissioner of Income Tax (Appeals) order, the assessee assailed an appeal before Tribunal.

5.3 Before us, the Id. Authorised Representative expressed that this expenditure is necessary to co-ordinate with the labour. Providing coffee and tea during day and night during work of laying of roads and culverts in the villages and there are no proper food facilities and further some time work in forest area and such expenditure is generally incurred to upkeep the labour and prayed for allowing the ground.

5.4 Contra, the Id. Departmental Representative relied on the orders of Commissioner of Income Tax (Appeals) and vehemently opposed the grounds.

5.5 We heard the rival submissions, perused the material on record. The fact that nature of expenditure being tea, coffee, freight charges and diesel expenditure, the assessee has claimed these expenditure incurred wholly and exclusively for the purpose of

activities of the business and the findings of the Id. Assessing Officer they are not supported with vouchers and doubted the genuineness and disbelieved the transactions. The Id.CIT(A) has confirmed the findings of the Id. Assessing Officer. Considering the apparent facts and material, we are of the opinion that the consent cannot be a reasons for sustaining the addition in exceptional circumstances of the working conditions of the firm and the nature of expenditure incurred. Further their shall not be laxity on the part of the assessee firm in maintenance of vouchers for due compliance of Income Tax provisions. we found that it would be reasonable to restrict the disallowance to 50% due to external circumstances of works and we direct the Id. Assessing Officer to restrict the disallowance of said expenses to 50% only and the ground of the assessee is partly allowed.

6 The last ground raised by the assessee is that Id. Assessing Officer has disallowed expenses of ₹15,95,100/- on account of labour charges, jelly purchase, sand purchase and gravel purchase and vouchers are self made could not be verified.

6.1 The Id. Assessing Officer found that the assessee firm has produced self made vouchers in respect of major expenditure claimed in profit and loss account and the expenditure pertaining to payments

to local vendors and lorry brokers who are supplying sand and jelly and not providing any bill receipt or vouchers. Therefore, the assessee firm has selfmade vouchers and filed in the assessment which the Id., Assessing Officer considered as doubtful and having not accepted the Id. Assessing Officer made disallowance. Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

6.2 In the appellate proceedings, the Id. Commissioner of Income Tax (Appeals) found that the disallowance on account of self made vouchers worked out to 0.53% of contract receipts being small fraction and the assessee firm wholly depends on lorry brokers, hawkers and does not issue bills or vouchers. The assessee in own interest maintain the accounts by providing internal vouchers to cut down any fraudentiall activities. The Id. Commissioner of Income Tax (Appeals) however confirmed the order of the Id. Assessing Officer. Aggrieved by the order, the assessee assailed an appeal before Tribunal.

6.3 Before us, the Id. Authorised Representative expressed that these expenditure is necessary to carry out the works at remote areas. The amount paid on account of labour charges, jelly purchase,

sand purchase and gravel purchase for laying of road and culvert in the villages and there are no proper facilities and some time work in forest area and no separate bills are issued by the vendor. Hence, internal vouchers are prepared to make the payments to vendor and prayed for allowing the appeal.

6.4 Contra, the Id. Departmental Representative relied on the orders of Commissioner of Income Tax (Appeals) and vehemently opposed the grounds.

6.5 We heard the rival submissions, perused the material on record. The fact that labour charges, jelly purchase, sand purchase and gravel purchase incurred wholly and exclusively for the purpose. Since, the vouchers are self made the Id. Assessing Officer has doubted the transactions and made disallowance. The Id.CIT(A) has confirmed the findings of the Id. Assessing Officer. Considering the facts and nature of expenditure and the laxity on the part of the assessee firm on non maintenance of record and compliance of Income Tax provisions, we found it Reasonable to restrict the disallowance at 50% due to Business activities at remote areas as discussed. We direct the Id. Assessing Officer to restrict the

disallowance to 50% only and the ground of the assessee is partly allowed.

7 In the result, the appeal of the assessee is partly allowed

Order pronounced on Thursday, the 30th day of June, 2016, at Chennai.

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated:30.06.2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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