

IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER

ITA no.3273/Mum./2014
(Assessment Year : 2009-10)

Pratibha Jagdish Thotangare,
AT Kandivali Tal Wada,
Thane, Mumbai 401 204
PAN ACPLT2813R

..... Appellant

v/s

CIT II
Ashat IT Park, 6th Floor,
Wagle Indl. Estate
Thane 400 604

..... Respondent

Assessee by : Shri. G.P. Mehta
Revenue by : Shir. Sanjay Singh

Date of Hearing –23.02.2017

Date of Order – 24.02.2017

ORDER

PER: SHAMIM YAHYA

This appeal by the assessee is directed against order of Ld.
CIT dated 24/3/2014, and pertains to assessment year 2011- 12.

2. The grounds of appeal read as under;

1. *On the facts and in the circumstances of the case the Ld. CIT erred in passing an order u/s. 263 of the I.T. Act, 1961 setting aside*

the order passed by the Learned I.T.O. Ward 1(3) Kalyan u/s. 143(3) since the said order was neither erroneous or prejudicial to the interest of revenue.

Without prejudice to the above

2. The Ld. CIT erred in presuming that there were violation of Sec. 40A(3) of the I.T. Act, 1961, when there was no such payment in excess of Rs. 20,000/- per day purchases per person.

3. The Ld. CIT erred in not considering that the Cash transactions/ Cash withdrawals if any from the Bank accounts were verified by the A.O. at the time of assessment.

The appellant prays that the Order passed by the CIT be cancelled quashed and the order of the A.O. be restored.

The appellant craves leave to adduce, add, amend, alter, or delete any of the above grounds of appeal or add new grounds of appeal which may be necessary, before or at the time of hearing of this appeal.

3. In this case Ld. CIT has passed following order u/s. 263 of the IT Act.

"1. In this case, the assessee filed Return of Income for the A.Y. 2009-10 on 07-08-2009 declaring total income of Rs.2,25,036/- after claiming deduction of Rs.1,00,000/- u/s. 80C of the I.T. Act. The assessee is doing a business of sates and purchase of sarees, dress

materials and clothes. The case was selected for scrutiny under CASS and after hearing, the AC) completed the assessment u/s. 143(3) of the Act on 28.12.2011, by making addition of Rs. 80,000/-on account of low profit ratio.

2. Subsequently on verification of records in respect of the above Assessment Year, it is noticed from the bank statement of the assessee that the assessee has made payment in cash to various' persons in excess of Its. 20,000/- total aggregating to Rs. 15,55,000/-. Section 40A (3) states that where the assessee incurs any expenditure in respect of which 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, no deduction shall be allowed in respect of such expenditure. In view of the above the A.O. should have disallowed the cash expenditure of Rs.15,55,000/-.

3. The above omissions, on the part of Assessing Officer rendered the Assessment order erroneous and prejudicial to the interest of revenue. Accordingly, a notice ti/s. 263 dated 06/11/2013 was issued which was duly served on the assessee.

4. In response to the above show cause notice, the assessee submitted a letter oil 10.01.2014, stating therein that she is appointing Shri L.G. Patel to represent her ease. No other submission

was made by the assessee. Therefore, another opportunity was offered to the assessee vide this office's letters dated 22.01.2014 & 10.03.2014 requesting her to attend on 05.02.2014 & 18.03.2014, respectively. However, the assessee has neither attended nor has made any written submissions.

5. In view of the above facts and circumstance of the case and non-compliance from the assessee, I am convinced that the order of the Assessing officer is erroneous and prejudicial to the interest of revenue and therefore this is a fit case where the provisions of Sec.263 of the IT Act, 1961 are clearly applicable. Accordingly, I set aside the order of the AO passed u/s 143(3) on 28.12.2011, with a direction to redo the assessment de novo after affording adequate opportunity to the assessee."

4. Against the above order assessee is an appeal before us. We have heard both the counsel and perused the record. We find that in this case Ld. CIT has noted that a total of Rs.15,55,000/- were paid in violation of section 40A (3), being payment in cash exceeding Rs.20,000/-. Despite several notices assessee didn't respond to the notice of Ld. CIT. In these circumstances Ld. CIT passed the aforesaid order direction the AO to redo the assessment denovo.

5. Upon careful consideration in our considered opinion, direction by the Ld. CIT-A to the assessing officer to redo the assessment denovo is not in accordance with his observation earlier. It is noted that Ld. CIT has found the order by the assessing officer to be prejudicial in as much as a sum of Rs.15,55,000/- were paid in violation of Section 40A (3). In this regard it is the submission of the assessee that there were no payments in violation of Section 40A (3). However, this aspect has not been substantiated and needs verification and the level of AO. The assessee's approach in not responding to the show cause notice of Ld. CIT is also not appropriate.

6. Accordingly, we modify the order of LD.CIT and direct the AO to confine his examination to the verification of payments in violation Section 40 A(3) as referred in para 2 of the order of LD. CIT u/s. 263.

In the result this appeal by the assessee is partly allowed.

Order pronounced in the Open Court on 24.02.2017

Sd/-

**SANJAY GARG
JUDICIAL MEMBER**

Sd/-

**SHAMIM YAHIYA
ACCOUNTANT MEMBER**

MUMBAI, DATED: 24 .02.2017

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Nishant Verma
Sr. Private Secretary*

By Order

(Dy./Asstt.Registrar)
ITAT, Mumbai

		Date	Initial	
1.	Draft dictated on	23.02.2017	}	Sr.PS
2.	Draft placed before author	23.02.2017		Sr.PS
3.	Draft proposed & placed before the second member	--		JM/AM
4.	Draft discussed/approved by Second Member	--		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	23.02.2017	}	Sr.PS
6.	Date of pronouncement	24.02.2017		Sr.PS
7.	File sent to the Bench Clerk	24.02.2017		Sr.PS
8.	Date on which file goes to the Head Clerk			
9.	Date of dispatch of Order			