

IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH : BANGALORE

BEFORESHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER AND  
SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No. 1498/Bang/2016
Assessment Year : 2008-09

Shri Patel Ambalal Rajesh, Prop: Raj Auto Centre, Shop No. 10, 11 & 12, Swimming Pool Complex, Hubli – 580 020.  <b>PAN: AEPPP 0163E</b>	Vs.	The Income Tax Officer, Ward – 1, Hubli.
APPELLANT		RESPONDENT

Assessee by	:	Shri Manoj D. Pukale, Advocate
Revenue by	:	Smt. H.L. Sowmya, Addl. CIT (DR)

Date of hearing	:	19.09.2017
Date of Pronouncement	:	28.09.2017

**ORDER**

*Per Shri A.K. Garodia, Accountant Member*

This appeal is filed by the assessee which is directed against the order of Id. CIT(A), Hubli dated 31.03.2016 for Assessment Year 2008-09.

2. The grounds raised by the assessee are as under.

*“1. On the facts and in the circumstances of the case, the order of the L’ndHubli Appellate Commissioner of Income tax, [CIT(A)] is opposed to facts and law and accordingly, liable to be set aside to allow the claims of the Appellant.*

*2. The L’nd CIT(A) erred to decide and confirm addition of Rs. 9,56,267/- u/s 40A(3) because he failed to appreciate the contents of Raj Auto Agency ledger and state the points for determination upon the correct facts.*

*3. The L’nd CIT(A) ought to have appreciated the fact that Appellant and Raj Auto Agency are VAT Registered dealers and the ledger of said Raj Auto Agencies contained only a small volume of purchase to which disallowing section 40A(3) would apply and not to all entries which largely included sarafi and bank transaction.*

*4. The L’nd CIT(A) also failed to appreciate that even the small*

*volume of purchase in the ledger of said Raj Auto Agencies was owing to circumstances and considerations of business expediency with other relevant factors. Hence claim of Appellant be allowed.*

*5. The L'nd CIT(A) also erred to decide and confirm disallowance of Rs. 2,83,250/- u/s 40a(ia) because he again failed to appreciate that the Liability side Balance Sheet item shown as TDS(Interest) Rs. 28,325/- alleged (in para 2 at Pg 3 of Asmt Order) to be deposited on 30/03/09 vide Cheque No.763404 pertained to current year interest claim is incorrect.*

*6. The L'nd CIT(A) ought to have appreciated the fact that the Cheque No.763404 allegedly deposited in Central Govt. A/c on 30/03/09 as seen in the bank pass book was of Rs. 34,266/- and not Rs.28,325/-.*

*7. The L'nd CIT(A) also failed to appreciate that even the TDS Rs. 30,678/- in respect of interest Rs. 2,97,836/- is also duly paid and shown in the Quarterly TDS Return in Form 26Q. Hence the claim the Appellant be allowed.*

*8. For these and other grounds that may be urged at the time of appeal hearing, the Appellant prays that the Appeal be allowed.”*

3. It was submitted by Id. AR of assessee that ground no. 1 is general and the issue involved in ground nos. 2 to 4 is common.
4. Regarding disallowance u/s. 40A(3) of the I.T. Act, 1961 raised in ground nos. 2 to 4, he submitted that details are noted by the AO on page no. 3 of the assessment order and as per the same, the amount is Rs. 32.20 lakhs as on 16.10.2007. He submitted that this amount is not correct. He also submitted that these payments are paid to M/s. Raj Auto Agencies and the complete ledger account of that party is available on pages 6 to 8 of paper book. He submitted that as per this ledger account, it can be seen that the amount of purchase from this party is only of Rs. 1,63,704/-. He submitted that although there is cash payment of Rs. 41,63,038.02/- but this is not on account of purchase debited to P & L account and therefore, disallowance u/s. 40A(3) in respect of such cash payments is not justified. The Id. DR of revenue supported the orders of authorities below.
5. We have considered the rival submissions. We find that this is not in dispute that cash payment has been made by assessee to M/s. Raj Auto Agencies, Hubli to the extent of Rs. 41,63,038.02/- at least because this much cash

payments is seen as per copy of ledger account submitted by assessee on pages 6 to 8 of paper book. As per page no.7 of paper book, these payments are on 10 dates during 11.06.2007 to 09.01.2008 and payment on each of these 10 dates is Rs. 2 lakhs and more except on 11.06.2007 where the payment is 1.60 lakhs. But the question is as to whether the payments to this party are in respect of any expenses claimed by the assessee in P & L account because section 40A(3) is a disallowance section as per which if an expenditure is claimed for which payment is made in cash in excess of a specified limit then such expenditure is not allowable to the extent of 20% and therefore, if the amount of cash payment is not in respect of expenditure debited in P & L Account then disallowance u/s. 40A(3) is not justified in respect of such cash payments. As per the assessment order, this fact is not coming out as to how much of such cash payment is in respect of the expenses debited to P & L account. Hence we feel it proper to restore back this matter to the file of AO for fresh decision with the direction that he should examine this aspect of the matter as to how much of this cash payment to this party is in respect of expenses debited by assessee to P & L account. To the extent it is found that the cash payment is not in respect of any expenses debited to P & L account then the AO may examine the applicability to the provisions of section 269SS to assessee as to whether there is any default of the assessee as per the provisions of this section. The AO should pass necessary order as per law in the light of above discussion after providing adequate opportunity of being heard to assessee.

6. Regarding ground nos. 5, 6 and 7, it was submitted by Id. AR of assessee that as per the assessment order, the disallowance has been made by the AO in respect of outstanding TDS payable shown by the assessee in the balance sheet copy of which available on page no. 2 of the paper book. The AO has calculated the amount of interest paid without TDS by way of back calculation and arrived at the amount of interest at Rs. 2,83,250/- and disallowed the same u/s. 40(a)(ia) of the I.T. Act, 1961. He submitted that on page no. 3 of paper book is the complete detail of interest expenditure debited by assessee to P & L account from which TDS deducted of Rs. 30,678/- which has been duly paid on

28.03.2008 and copy of challan is available on the same page i.e. page no. 3 of paper book. At this juncture, a query was raised by the bench as to if this amount of TDS has been paid on 28.03.2008 then the same will not appear in the balance sheet as on 31.03.2008 as a liability and therefore, the amount shown in the balance sheet as liability on account of TDS ( interest) Rs. 28,325/- is not this amount but a different amount. In reply, it was submitted by Id. AR of assessee that the complete details of interest and TDS on interest is available on page no. 1 of the paper book as per which out of total interest of Rs. 6,69,896/-, TDS was deductible only in respect of interest expenditure of Rs. 2,97,836/- and from the remaining amount of interest payment, TDS was not deductible and not deducted because the same was on account of interest payment to bank or below Rs. 5000/- per person or for which declaration was given by the deductee in form 15G. The Id. DR of revenue supported the orders of authorities below.

7. We have considered the rival submissions. We find that the AO has proceeded on this basis that outstanding TDS payable of Rs. 28,325/- shown in balance sheet is in respect of TDS on interest expenditure but as per the details of interest expenditure available on page nos. 1 to 3 of paper book, only on amount of interest expenditure of Rs. 2,97,836/-, TDS was deductible and the same was deducted Rs. 30,678/- and the payment was also made on 28.03.2008. But this very fact that the said TDS Rs. 30,678/- on account of interest payment was paid before 31.03.2008 itself shows that amount of TDS payable shown in the balance sheet as on 31.03.2008 of Rs. 28,325/- is not on account of interest expenditure in the present year. It may be on account of interest expenditure of an earlier year or it may be on account of other expenses for which TDS was deducted and not paid before 31.03.2008. In this view of the matter, we feel it proper to restore this matter also back to the file of AO for fresh decision with the direction that AO should first find out the year and head of expenditure from which TDS was deducted and was outstanding as on 31.03.2008 to the extent of Rs. 28,325/- and then if the assessee cannot establish that such TDS was paid before the due date of filing of return of income, then the disallowance may be made out of such expenses from which

TDS was deducted but not paid. The AO should pass necessary order as per law after providing adequate opportunity of being heard to assessee.

8. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-

(SUNIL KUMAR YADAV)  
Judicial Member

Sd/-

(ARUN KUMAR GARODIA)  
Accountant Member

Bangalore,  
Dated, the 28<sup>th</sup> September, 2017.  
/MS/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Senior Private Secretary,  
Income Tax Appellate Tribunal,  
Bangalore.