

IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA

BEFORE SHRI A. T VARKEY, JM &DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.1565/Kol/2016

(निर्धारणवर्ष / Assessment Year: 2011-12

Sri Ajit Kumar Kundu	Vs.	ITO, Ward-24(4), Hooghly
M/s Mumpi Enterpriise, Kamarpukar Chati, P,O. Sirpur, Hooghly, Pin 712612		
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AFIPK3377B		
(ASSESSEE)	..	(RESPONDENT)

Assessee by

: Shri K. M. Roy, FCA

Respondent by

:Shri Arindam Bhattacharjee, ACIT

सुनवाईकीतारीख/ **Date of Hearing** : **31/08/2017**

घोषणाकीतारीख/**Date of Pronouncement** : **22/11/2017**

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the assessee, pertaining to assessment year 2011-12, is directed against the order passed by the Id. Commissioner of Income Tax (Appeals)– 6, Kolkata, in Appeal No.500/CIT(A)-6/Kol/13-14, dated 27.05.2016, which in turn arises out of an order passed by the Assessing Officer u/s.143(3) of the Income Tax Act 1961, (hereinafter referred to as the 'Act'), dated 21.02.2014.

2.The assessee has raised the following grounds of appeal:

"1.For that the Ld. Commissioner of Income Tax was not at all justified in disallowing the payment of Rs.13,21,260/- to Arun Distributors for alleged contravention of the provisions of section 40A(3) of the I.T. Act 1961.

2. For that the Ld. Commissioner of Income Tax was not at all justified in disallowing the payment of Rs.1,66,105/- to Samruddhi Cement Ltd. for alleged contravention of the provisions of section 40A(3) of the I.T. Act 1961.

3. For that the Ld. Commissioner of Income Tax was not at all justified in disallowing the payment of Rs.1,53,000/- to M/S Ultratech Cement Ltd. for alleged contravention of the provisions of section 40A(3) of the I.T. Act 1961.

4. For that the Ld. Assessing Officer was not at justified in making the addition of Rs.13,189/- as undisclosed income of the assessee.

5. For that the assessee craves leave to take further and for additional grounds at the time or before hearing of this appeal if necessary.”

3. Ground No.1 raised by the assessee relates to disallowance of payment of Rs. 13,21,260/- to Arun Distributors for alleged contravention of the provisions of section 40A(3) of the I.T. Act 1961.

3.1 The brief facts qua the issue are that during the assessment proceedings, the assessee submitted before the Assessing Officer that all payments were made to M/s Arun Distributors Pvt. Ltd. by cash in time to time on different dates and the payment has been made by the assessee below Rs.20000/- which was reported in assessee's books of account. During the assessment proceedings, the assessee also submitted the ledger account of Arun Distributors Pvt. Ltd. The Assessing Officer sent notices u/s 133(6) to M/s Arun Distributors Pvt. Ltd. In response to the notice u/s 133(6), M/s Arun Distributors Pvt. Ltd. replied to the Assessing Officer that all the payments were made through cash and none of them was below Rs.20,000/-. Therefore, after getting the reply from M/s Arun Distributors Pvt. Ltd., the Assessing Officer rejected the assessee's claim and made the addition of Rs. 13,21,260/- u/s 40A(3) of the I.T. Act 1961 on account of alleged contravention of the Act.

3.2. Aggrieved from the addition made by the Assessing Officer, the assessee filed an appeal before the Id. CIT(A) who has confirmed the addition made by the Assessing Officer. The Id. CIT(A) observed that the copy of account of the assessee

provided by M/s Arun Distributors during the assessment proceeding is clear evidence of the fact that cash payments exceeding Rs.20,000/- each on several occasions were made by the assessee. There is no evidence of the trade practice that M/s. Arun distributors used to insist on daily collection of cash through agents. Therefore, the Id. CIT(A) held that there was no reliable evidence to prove that the assessee had not made cash exceeding to Rs.20,000/- and therefore, confirmed the addition made by the Assessing Officer on account of payment made to M/s Arun Distributors at Rs.13,21,260/-.

3.3. Not being satisfied with the order of the Id. CIT(A), the assessee is in appeal before us. The Id. Counsel for the assessee has submitted before us that the assessee is operating his business from remote area, therefore, it was not possible for the assessee to make the payment through cheque or demand draft. The Id. Counsel also submitted that as per books of the assessee, they did not make any payment exceeding to Rs.20,000/-.

3.4. However, on the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the AO, which we have already noted in our earlier para and is not repeated for the sake of brevity.

3.5. Having heard the rival submissions and perused the materials available on record, we are of the view that the Assessing Officer did not examine the assessee's business location, since the assessee is operating his business from remote area where it was not possible to make payment from cheque or demand draft and all the payments made by the assessee were below Rs.20,000/-, as per his books of accounts. Therefore, we direct the Assessing Officer to examine the location of assessee's business, whether it was situated in a remote area where it

was not possible for the assessee to make the payment through cheque or through account payee cheque or demand draft. The Id. DR for the Revenue did not have any objection if the said issue is remanded back to the file of the Assessing Officer. Therefore, we direct the Assessing Officer to examine the location of the business of the assessee and also to examine the payment made by the assessee below Rs.20,000/- and if the assessee's business is situated in remote area then relief should be given to the assessee as per the provisions of the Act. Therefore, we allow this ground for statistical purposes.

3.6. In the result, the appeal filed by the assessee(in Ground no.1) is allowed for statistical purposes.

4. Ground No.2 raised by the assessee relates to addition of Rs.1,66,105/-, for alleged contravention of the provisions of section 40A (3) of the Act.

4.1 The brief facts qua the issue are that Rs.98000/- payment was made by assessee on dated 29.07.2010 to Samruddhi Cement Ltd. by draft. During the assessment proceedings, the assessee submitted that he made payment to Samruddhi Cement Ltd. at Rs.98000/- by bank draft due to urgency of business. The Assessing Officer noted that the assessee himself did not claim that payments were made through account payee demand draft or account payee cheque. Besides, the cash book of the assessee shows the narrations, being the amount paid in cash and party ledger of Samruddhi Cement Ltd. in the books of the assessee shows the narration, "to cash". Therefore, the Assessing Officer found that the assessee's submission was contradictory to his own record and hence he rejected the claim of the assessee and made the addition of Rs.98,000/- on account of payment made to Samruddhi Cement Ltd.

4.2. On appeal to the Id. CIT(A), the Id. CIT(A) observed that assessee had made payment of Rs.1,66,105/- to M/s. SamruddhiCement Limited which have been treated as cash payments in contravention of section 40A(3) of the Act by the AO. The explanation given by the assessee was that an amount of Rs.68,105/- was not cash payment but a transfer entry between two suppliers of the same group i.e. from Ultratech Cement Limited to SamruddhiCement Limited. As regards payment of Rs. 98,000/-, it had been stated that the assessee had made a bank draft and paid the supplier by way of bank draft. In the remand report, the AO had reported that the amounts were recorded as cash payments in the account of the assessee. The CIT(A) examined the case record and the accounts furnished by M/s. Samruddhi Cement Limited and M/s. UltratechCement Limited available on the record. On examination, the CIT(A) found that there was no evidence of any transfer entry of Rs.68,105/- between the two accounts. As regards the payment of Rs.98,000/- on 29.07.2010, in the assessee's account, the payment had been recorded as a cash payment. No evidence had been provided by the assessee during assessment proceedings to show that the payments had been made by way of account payee demand draft. Hence, the total payment of Rs.1,66,105/- made to M/s. Samruddhi Cement Limited also was held to be cash payment in violation of section 40A(3) of the Act and therefore, CIT(A) confirmed the addition made by the Assessing Officer.

4.3. Not being satisfied with the order of the Id. CIT(A), the assessee is in further appeal before us. The Id. Counsel for the assessee submitted before us that the assessee under consideration, is operating his business from remote area where it is difficult to make the payment through cheque or demand draft. The Id. Counsel

also submitted that the payment has been made below Rs.20000/- and was duly recorded in the books of account.

4.4. On the other hand, the Id. DR for the Revenue defended the order passed by the Assessing Officer.

4.5. We have heard both the parties and perused the materials available on record, we are of the view that assessee is operating his business from remote area and it is difficult for the assessee to make the payment through account payee cheque or account payee demand draft. The authorities below did not accept the assessee's submission. However, the order of the Id. CIT(A) was covered with the remand report of Assessing Officer and hence, disallowed the assessee's claim stating that assessee made the payment, in a day, exceeding Rs.20,000/-.

We are of the view that the Assessing Officer did not examine the assessee's business location, since the assessee is operating his business from remote area (as claimed by assessee) where it was not possible to make payment from cheque or demand draft and all the payments made by the assessee were below Rs.20,000/-, as per his books of accounts. Therefore, we direct the Assessing Officer to examine the location of assessee's business, whether it was situated in a remote area where it was not possible for the assessee to make the payment through cheque or through account payee cheque or demand draft. The Id. DR for the Revenue did not have any objection if the said issue is remanded back to the file of the Assessing Officer. Therefore, we direct the Assessing Officer to examine the location of the business of the assessee and also to examine the payment made by the assessee below Rs.20,000/- and on examination, if the AO finds that assessee's business is situated in a remote area then relief should be

given to the assessee as per the provisions of the Act. Therefore, we allow this ground for statistical purposes.

4.6 In the result, the appeal filed by the assessee(in Ground no.2) is allowed for statistical purposes.

5. Ground No.3 raised by the assessee relate to addition made by the Id. CIT(A) u/s 40A(3) of the I.T. Act 1961 at Rs. 1,53,000/- in respect to cash payment made to M/S Ultratech Cement Ltd.

5.1 This ground No.3 contains the same identical issue which we have adjudicated in Para 4.5 and 4.6 of this order. Therefore, we are of the view that since the assessee was operating his business from remote area and for him it is not possible to make the payment always through account payee cheque or demand draft. Therefore, we are of the view that this issue is to be examined by the Assessing Officer whether the assessee is operating his business from remote area, where it is not possible to make payment by cheque/draft. On examination, if the AO finds that assessee`s business is situated in a remote area then relief should be given to the assessee as per the provisions of the Act. Hence, we set aside the order of the Id. CIT(A) and remand the matter back to the file of the Assessing Officer.

5.2. In the result, the appeal filed by the assessee(Ground No.3), is allowed for statistical purposes.

6. Ground No.4 raised by the assessee relates to the addition of Rs.13,189/- on account of undisclosed income of the assessee.

6.1 The brief facts qua the issue are that in the course of assessment proceedings, the Assessing Officer, on verification of the information collected u/s 133(6) of the Act, found that the assessee had received interest income from UBI, Kamarpukur Branch, which have not been considered while arriving total income. During the assessment proceedings, the assessee did not provide any explanation in this

regard and therefore, the Assessing Officer made the addition on account of the accrued interest of Rs.13,189/-

6.2. On appeal to the Id. CIT(A), the Id. CIT(A) observed that interest of Rs.7,859/- , was accrued on the fixed deposit of the assessee, in UBI, Kamarpukar Branch having balance of Rs.77,718. The assessee submitted before the Id. CIT(A) that the interest had been declared at the time of maturity. However, the assessee did not provide any details in respect of such income which was offered for taxation at the time of maturity of fixed deposits. Therefore, the Id. CIT(A) confirmed the addition made by the Assessing Officer.

6.3. Not being satisfied with the order of the Id. CIT(A) the assessee is in appeal before us. The Id. Counsel for the assessee submitted before us that interest of Rs.13,189/- as per assessee's fixed deposit and the said amount had not been accrued. Therefore, it was not getting reflected in the books of account. The assessee had shown this interest in the year in which the payment has been crystallized that had received by the assessee on maturity. Therefore, the Id. Counsel stated that the assessee has offered this interest income on maturity of the fixed deposits. Therefore, additions should not be made. However, the Id. DR opposed the claim of the assessee since the assessee had been maintaining books of account as per mercantile system of accounting, hence interest should be accrued and the assessee should offer the accrued interest for taxation purposes.

6.4. We have heard both the parties and perused the materials on record, we are of the view that this issue requires a fresh examination at the hand of the Assessing Officer to examine whether the assessee has offered the said interest for taxation on maturity date, that is, on receipt basis rather than accrual basis. We note that assessee is not a private limited or limited company, he is only an individual, therefore Companies Act does not apply to him to follow accrual basis of

accounting. We direct the Assessing Officer to examine whether the assessee has shown the interest income based on the crystallization (Maturity date), and if the assessee offered the said interest for taxation on maturity date then AO should allow the claim of the assessee as per the provisions of the Act. Therefore, we allow this Ground of Appeal of the assessee for statistical purposes.

6.5. In the result, the appeal filed by the assessee (on Ground No.4) is allowed for statistical purposes.

Order pronounced in the open court on this **22/11/2017**.

Sd/-
(A. T. VARKEY)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata; दिनांक Dated **22/11/2017**

RS,SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Assessee– Sri Ajit Kumar Kundu
2. प्रत्यर्थी/ The Respondent-ITO, Ward-24(4), Hooghly
3. आयकरआयुक्त(अपील) / The CIT(A), :Kolkata.
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.
सत्यापितप्रति

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By Order

Senior Private Secretary,
Head of Office/D.D.O,
I.T.A.T, Kolkata Benches,
Kolkata.