

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.412/PUN/2017

निर्धारण वर्ष / Assessment Year : 2013-14

Shri Radhakishan Hiralal Jaiswal,
01, C L Shop, Gangakhed Naka,
Parbhani - 431401

PAN : AADFH8240G

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Parbhani Ward, Parbhani

.....प्रत्यर्थी / Respondent

Assessee by : Smt. Deepa Khare
Revenue by : Shri Ajay Modi

सुनवाई की तारीख / Date of Hearing : 25-10-2017

घोषणा की तारीख / Date of Pronouncement : 17-01-2018

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-1, Aurangabad dated 30-01-2017 for the assessment year 2013-14.

2. The brief facts of the case as emanating from records are: The assessee/appellant is a partnership firm engaged in the business of retail

trading of country liquor. During the course of scrutiny assessment proceedings, the Assessing Officer observed that in the period relevant to assessment year under appeal, the assessee had purchased liquor from M/s. Trimurti Enterprises to the tune of Rs.1,37,82,558/-. Out of the total above said purchases the assessee had paid Rs.1,27,99,850/- in cash exceeding Rs.20,000/-. The assessee had deposited cash directly in the bank account of M/s. Trimurti Enterprises maintained with State Bank of Hyderabad, Parbhani Branch. The Assessing Officer made disallowance of Rs.1,27,99,850/- u/s. 40A(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). Apart from above, the Assessing Officer made additions/disallowances on following counts as well.

- i. Disallowance of remuneration u/s. 40(b) Rs.1,54,295/-.
- ii. Provision of Local Body Tax (LBT) payable Rs.4,44,040/-.

Aggrieved by assessment order dated 23-02-2016, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) rejected the contentions of assessee and confirmed the addition. Now, the assessee is in second appeal before the Tribunal assailing the additions confirmed by First Appellate Authority.

3. Smt. Deepa Khare appearing on behalf of the assessee submitted that the assessee is a partnership firm consisting of two partners. Shri Hiralal R. Jaiswal was the managing partner, who died on 30-12-2010. The legal heirs of the deceased partner were yet to be admitted as the partner of the firm. Since, the assessee firm is engaged in liquor business, prior approval of Collector of Excise was mandatory requirement for change in the partnership deed. The approval was received from the Collector on 07-04-2013, till that time the legal heirs were representing the deceased

partner. The bank account of the firm was operated by Shri Hiralal R. Jaiswal, after his demise the bank account of the firm could not be operated. The second partner of the assessee firm Shri Gaud was based in Hyderabad. Therefore, the assessee was constrained to make the payments for purchase of liquor in cash. The assessee had made payments by way of direct deposit of cash in the bank account of M/s. Trimurti Enterprises who was the main supplier of country liquor to the assessee. The assessee had produced bank deposit slip as well as bank statement of M/s. Trimurti Enterprises before the authorities below. All the purchases are genuine and verifiable as the assessee was required to maintain Excise records for purchase/sale of liquor. The Id. Counsel for the assessee pointed that the assessee was required to maintain Excise register of daily sale, purchase, stock in the prescribed format. Since, the payments were directly made in the bank account of the supplier of country liquor, therefore, the provisions of section 40A(3) are not attracted. The Id. Counsel for the assessee contended that the cash payments for purchase of country liquor were made on account of business exigencies as the bank of the assessee could not be operated after the death of Shri Hiralal R. Jaiswal, Managing partner.

3.1 The Id. Counsel for the assessee asserted that the provisions of section 40A(3) does not bar cash payments absolutely but provides a scope to consider exceptional situations in business. The authorities below have invoked the provisions of section 40A(3) holding that the assessee does not fall within the exceptions provide under Rule 6DD of the Income Tax Rules.

3.2 The Id. Counsel for the assessee had filed an application for furnishing following documents as additional evidence :

1. New Bank A/c of firm from June 2013.
2. Bank A/c of the appellant firm from AY 2011-12.
3. Ledger A/c extract AY 2011-12 of Tirupati Enterprises.
4. Ledger A/c of Tirupati Enterprises for AY 2014-15.
5. Cash Book for subsequent period for LBT reversal entry.
6. Correspondence with Collector of Excise for renewal and Substitution of names of legal heirs as partners.

The Id. Counsel submitted that after the death of Shri Hiralal R. Jaiswal, managing partner of the assessee, the bank account of the assessee had become un-operational. The assessee is filing bank statement of old account of assessee firm maintained with Sundarlal Sawji Urban Co-op. Bank Ltd., Jintur. The assessee opened a new bank account with Bank of Maharashtra after the formation of new partnership firm. All subsequent payments were made to M/s. Trimurti Enterprises through said bank account. The assessee has also filed correspondence with Collector of Excise for renewal of Excise license and substitution of names of the legal heirs of deceased partner. Apart from that the assessee has also filed ledger extract of M/s. Trimurti Enterprises to show that the assessee was making cash payments for purchase of country liquor. The Id. Counsel submitted that new firm was formed on 07-02-2013 and the said change in the firm was approved for liquor license by competent Excise Authority on 14-06-2013. In the meanwhile, a permission to continue the operation under the old license was obtained. The new bank account in the name of new partnership firm was opened in June, 2013 and thereafter, the payments were made by account payee cheque to M/s. Trimurti Enterprises. The additional evidences filed by the assessee are in support of aforesaid submissions.

The ld. Counsel for the assessee submitted that the assessee could not furnish additional evidences before the lower authorities as the assessee was under the impression that since the purchases are genuine and payments are made through bank deposits, therefore, the provisions of section 40A(3) are not attracted. The plea and evidences of hardship in operating bank account of assessee firm could not be taken before the Authorities below on account of lack of proper legal guidance.

3.3 The ld. Counsel for the assessee submitted that the transactions carried out by the assessee for purchase of country liquor with M/s. Trimurti Enterprises are genuine and the payments are made through banking channel. Thus, the provisions of section 40A(3) are not attracted. In support of her submissions the ld. Counsel placed reliance on the following decisions :

- i. Attar Singh Gurmukh Singh Vs. ITO, 191 ITR 667 (SC);
- ii. Smt. Harshila Chordiya Vs. ITO, 298 ITR 349 (Raj.);
- iii. Anupam Tele Services Vs. ITO, 366 ITR 122 (Guj.);
- iv. Honey Enterprises Vs. CIT, 381 ITR 258 (Del.);
- v. Gurdas Garg Vs. CIT, 63 taxman.com 289 (P & H).

3.4 In respect of other addition the ld. Counsel for the assessee reiterated the submissions made before the Commissioner of Income Tax (Appeals).

4. On the other hand Shri Ajay Modi representing the Department vehemently defended the impugned order. The ld. DR submitted that the payments were made to the tune of Rs.1.28 crores in cash exceeding Rs.20,000/- to M/s. Trimurti Enterprises. The ld. DR submitted that

though the cash was deposited in the bank account of the supplier of country liquor, the assessee also had account in the same bank and in the same branch. The assessee could have utilized banking channel for making the payments rather than making cash deposits in the account of M/s. Trimurti Enterprises. The ld. DR pointed that the Assessing Officer had summoned the vendor of country liquor. Shri R.D. Khinvasara, CA and Shri Vishal Toshniwal, Accountant appeared on behalf of M/s. Trimurti Enterprises and categorically stated that they never compelled or insisted the debtors to pay in cash. The assessee deposited the cash in bank account suo moto. They further clarified that except for the assessee, none of the other buyer had made cash payments or cash deposits in the bank account. The ld. DR submitted that the assessee has failed to show business exigencies for making cash payments. As far as reason for cash payments on account of death of managing partner Shri Hiralal R. Jaiswal is concerned, it is not sustainable. The other partner of the firm could have operated the bank account. The assessee has failed to show any of the exceptions provided under Rule 6DD under which the benefit could be granted to the assessee for making cash payments. The ld. DR in support of his submissions placed reliance on the decision of Pune Bench of the Tribunal rendered in the case of T.G. Mutha Vs. Income Tax Officer reported as 54 ITD 460.

5. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The assessee in appeal has assailed the findings of Commissioner of Income Tax (Appeals) on three grounds. The ground Nos. 1 and 2 relate to disallowances of Rs.1,27,99,850/- u/s. 40A(3) of the Act. The assessee is engaged in trading of country liquor. It is an undisputed fact that the assessee had

made cash purchases of country liquor to the tune of Rs.1,27,99,850/- from M/s. Trimurti Enterprises. The reasons given by the assessee for making cash payments for purchase of country liquor is that the managing partner of the assessee firm Shri Hiralal R. Jaiswal expired on 30-12-2010. Thereafter, the bank account of assessee firm could not be operated. It took some time for assessee to make necessary changes in the partnership firm as well as in the liquor license. The new bank account in the name of new partnership firm could be opened only after taking necessary approval from Collector, Central Excise. The assessee has filed additional evidences to show correspondence with Collector of Central Excise, bank statements of new partnership firm and the bank statements of the old partnership firm. It is an undisputed fact that the assessee was carrying on liquor business during the relevant period and the assessee was required to maintain the details of purchase and sale of liquor under the Excise Act. The assessee is also required to maintain stock register of liquor under the provisions of Excise Act. The fact that the assessee has been making cash payments for purchase of liquor has been endorsed by representative of M/s. Trimurti Enterprises. However, the assessee has filed additional evidences in support of its contentions that the bank account of partnership firm could not be operated after the death of Shri Hiralal R. Jaiswal on 30-12-2010 and till the time new bank account is opened in the name of new firm all payments were made in cash. After opening of new bank account the payments were made to M/s. Trimurti Enterprises through cheque. We of the considered view that additional evidences filed by the assessee are vital for examining the veracity of submissions made on behalf of assessee before us. Under such circumstances we deem it proper to remit this issue back to the file of Assessing Officer for examination of same and thereafter re-adjudicate the issue. The Assessing

Officer shall grant sufficient opportunity of hearing to the assessee before deciding the issue, in accordance with law. Accordingly, ground Nos. 1 and 2 raised by assessee in appeal are allowed for statistical purpose.

6. In ground No. 3 of appeal the assessee has assailed confirming of disallowance of Rs.1,54,295/- on account of remuneration paid to legal heirs of deceased partner. A perusal of impugned order shows that the Commissioner of Income Tax (Appeals) has confirmed addition on the ground that assessee had agreed for addition. Thus, the addition/disallowance was made on the basis of concession given by assessee. This fact has not been controverted by ld. Counsel for assessee before us. Therefore, now, we do not find any reason to interfere with the findings given by authorities below in making addition on the basis of concession granted by assessee. It is not the case of assessee that concession has been given under mistaken belief. Accordingly, the findings of Commissioner of Income Tax (Appeals) on this issue are upheld and ground No. 3 raised by assessee in appeal is dismissed.

7. In ground No. 4 of appeal the assessee has assailed confirming of addition Rs.4,44,040/- on account of Local Body Tax. On perusal of impugned order it reveals that in respect of this addition as well the Commissioner of Income Tax (Appeals) has confirmed the addition as the assessee had granted concession/agreed for such addition before the Assessing Officer. Again the ld. Counsel for assessee has not been able to show that the concession was given before the Assessing Officer by assessee under any bonafide mistaken belief. No such ground was either raised before First Appellate Authority or before us. Therefore, we find no reason to interfere with the findings of Commissioner of Income Tax

(Appeals). Accordingly, ground No. 4 raised in appeal by assessee is dismissed.

8. In ground No. 5 raised in appeal by assessee is general in nature, hence, requires no adjudication.

9. In the result, appeal of assessee is partly allowed for statistical purpose in the terms aforesaid.

Order pronounced on Wednesday, the 17th day of January, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 17th January, 2018

RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-1, Aurangabad
4. The Pr. Commissioner of Income Tax-1, Aurangabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune