

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES , JAIPUR

श्री भागचन्द, लेखा सदस्य एव श्री कुल भारत, न्यायिक सदस्य के समक्ष
BEFORE: SHRI BHAGCHAND, AM & SHRI KUL BHARAT, JM

आयकर अपील सं./ITA No. 321/JP/2017
निर्धारण वर्ष/Assessment Year: 2014-15

Shri Vrindavan Lal Gupta 760, Barkat Nagar, Pushpanjali Marg Tonk Road, Jaipur	बनाम Vs.	The ITO Ward- 6 (2) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AFCPG5046 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri S.L. Poddar, Advocate
राजस्व की ओर से / Revenue by: Shri Jagdish Chandra Kulhari, JCIT - DR

सुनवाई की तारीख / Date of Hearing : 25/01/2018
घोषणा की तारीख / Date of Pronouncement : 25 /01/2018

आदेश / ORDER

PER BHAGCHAND, AM

The assessee has filed an appeal against the order of the Id.
CIT(A)-2, Jaipur dated 21-03-2017 for the assessment year 2014-15
raising following ground of appeal:-

“That the Id. CIT(A) had not allowed the payments
made in cash to Jaipur Zila Dugdh Utpadak Sahakari Sangh
Limited (Saras Dairy) which is Government Cooperative

Society of Rs. 59,30,000/- disallowed by the AO u/s 40A(3) of the I.T. Act, 1961.

2.1 Apropos solitary ground of the assessee, the facts as emerges from the order of the Id. CIT(A) is as under:-

“2.3 I have perused the facts of the case, the assessment order and the submissions of the appellant. It is noted that payments of a total amount of Rs. 1,14,64,000/- were made in cash to M/s. Jaipur Zila Dugdh Utpadak Sahakari Sangh Ltd (Saras Dairy), Jaipur in violation of section 40A(3) of the I.T. Act, 1961. The assessee supplies milk to the Jaipur Dairy Booths from Saras at a price fixed by M/s. Jaipur Zila Dugdh Utpadak Sahakari Sangh Ltd. on a contractual basis. It was contended that since the assessee is dealing in milk products, the same are exempted under rule 6DD(e) and alternatively some payments have been made on Sundays and bank holidays also, hence were exempted from the provisions of section 40A(3) of the I.T. Act, 1961. The Assessing Officer allowed the payments of an amount of Rs. 55,34,000/- made on bank holidays but did not allow the amounts paid on other days under rule 6DD(e). The Authorized Representative reiterated the same submissions in the present proceedings. It is seen that both the assessee and M/s. Jaipur Zila Dugdh Utpadak Sahakari Sangh Ltd have bank account and payments are being made through the same. Further Rule 6DD (e) would be applicable when the payments is made to the producers of the dairy products which is not the case in hand, payments are made to the government corporations. In view of the above, the payments are covered by the provisions of section 40A(3), the disallowance made by the Assessing Officer is confirmed. The ground of appeal is dismissed.”

2.2 During the course of hearing the Id.AR of the assessee prayed that the lower authorities have erred in disallowing the cash payments of Rs. 59.30lacs made to M/s. Jaipur Zila Dugdh Utpadak Sahakari Sangh Ltd u/s 40A(3) of the Act by the assessee. The Id.AR of the assessee filed the written submission which has been taken into consideration.

2.3 On the other hand, the Id. DR supported the orders of the lower authorities.

2.4 We have heard the rival contentions and perused the materials available on record. In this case, the AO observed that the assessee made payments of Rs. 1,14,64,000/- on various dates (page 2 of assessment order) to M/s. Jaipur Zila Dugdh Utpadak Sahakari Sangh Ltd (Saras Diary), Jaipur in violation of provisions of section 40A(3) of the I.T. Act, 1961. The AO further noted that assessee made payments of Rs. 55,34,000/- on bank holidays which are excluding the purview of sec 40A(3) of the I.T. Act, 1961. The AO thus disallowed the payments of Rs. 59.30 lacs in violation of provisions of sec 40A(3) of the Act and added the same to the total income of the assessee by observing as under:-

“Considering the facts of the case and Rule 6DD of the Act, the exemption is only allowed for the day on which the banks were closed either on account of holiday or strike.

Further the plea of the assessee depositing the cash on Monday is not considered as the Monday has not been considered in exclusion. In the light of the above, following expenses in excess of twenty thousand in a day incurred in cash is disallowed and added to the total income of the assessee u/s 40A(3):-

S.N.	Date of payment	Amount Paid
1.	20-05-2013	500000
2.	27-05-2013	300000
3.	03-06-2013	600000
4.	24-06-2013	550000
5.	15-07-2013	300000
6.	22-07-2013	450000
7.	16-08-2013	250000
8.	09-09-2013	700000
9.	01-10-2013	480000
10.	7-10-2013	600000
11.	14-10-2013	600000
12.	18-10-2013	600000
		5930000

In first appeal, the ld. CIT(A) has confirmed the action of the AO. The assessee is an individual and is engaged in transporting milk from M/s. Jaipur Zila Dugdh Utpadak Sahakari Sangh Ltd (Saras) to various Saras Dairy booths on commission basis i.e. @ Rs.49.90 per litre. The work of the assessee included in taking milk from Saras Dairy and distribution of the same to various Saras Dairy booths and also collection of money

from booths and paying the same to Saras Dairy. On such collection of money, the assessee was entitled for commission @ Rs. 49.90 per litre. It is noted that in the case of the assessee the identity of the recipient M/s. Jaipur Zila Dugdh Utpadak Sahakari Sangh Ltd (Saras Dairy) is well established to whom the entire payment of Rs. 59.30 lacs has been made by the assessee. It is noted that in the entire assessment order there is not a single word doubting the genuineness of payments or questioning the payments in any other way. The assessee collected payments from the dairy booths and got commission @ Rs. 49.90 paise per litre. Thus the assessee was in fact working as an agent on commission basis. Therefore, the payments did not require to be disallowed in his hands. There is no iota of doubt regarding the genuineness of the payments. The Hon'ble Rajasthan High Court in the case of Smt. Harshila Chordia vs ITO (2008) 298 ITR 349 held as under:-

Held: (i) that there was no dispute about the genuineness of the transactions and the payment and identity of the receiver were established. The conclusion reached by the Commissioner (Appeals) was correct and the Tribunal by ignoring the scope of clause (j) of rule 6DD as explained by the Board's Circular had

erred in reversing the finding reached by the Commissioner (Appeals). The addition of Rs. 40,13,000/- could not be made under section 40A(3).’’

In the case of Anupam Tele Services vs ITO (2014), 366 ITR 122, the Hon'ble Gujarat High Court observed as under:-

’’The terms of section 40A(3) are not absolute and other relevant factors are not excluded. Genuine and bonafide transactions are taken out of the sweep of the section.’’

Moreover, the contract of this work is in existence since 2006 but no such disallowance was made in earlier years. Taking into consideration the above facts and circumstances of the case and the case laws in the case of Smt. Harshila Chordia vs ITO and Anupam Tele Services vs ITO (supra), it is observed that the Id. CIT(A) has erred in disallowing the payment of Rs. 59.30 lacs to the assessee. Thus the solitary ground of the assessee is allowed.

3.0 In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 25 -01-2018.

Sd/-

(कुल भारत)

(KUL BHARAT)

न्यायिक सदस्य /Judicial Member

Sd/-

(भागचन्द)

(Bhagchand)

लेखा सदस्य /Accountant Member

जयपुर / Jaipur

दिनांक / Dated:-

25 /01/ 2018

*Mishra

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

1. अपीलार्थी / The Appellant- Shri Vrindavan Lal Gupta, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward- 6 (2), Jaipur
3. आयकर आयुक्त(अपील) / CIT(A).
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 321/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar