

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. 368/PUN/2014

निर्धारण वर्ष / Assessment Year : 2010-11

M/s. AGH Batwawala,  
2033 C Ward,  
Opposite Kolhapur  
Municipal Corporation,  
Kolhapur-416 001  
PAN : AACFA4659H

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward 1(1),  
Kolhapur.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Ganoo &  
Shri Mayuresh Joshi

Revenue by : Shri Ajay Modi

सुनवाई की तारीख / Date of Hearing : 18.04.2018

घोषणा की तारीख / Date of Pronouncement : 25.04.2018

**आदेश / ORDER**

**PER VIKAS AWASTHY, JM**

This appeal by assessee is directed against the order of Commissioner of Income Tax (Appeals), Kolhapur dated 18.12.2013 for the assessment year 2010-11.

2. The brief facts of the case as emanating from records are: The assessee is a wholesale trader of Vanaspati oil, Rava, Maida, Aata, Sugar etc. The assessee filed its return of income for the impugned assessment year on 06.10.2010 declaring total income of Rs.12,86,290/-. The case of the assessee was selected for scrutiny. Accordingly, statutory notice u/s.143(2) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') was issued to the assessee on 27.09.2011 which was duly served on the assessee. During the course of scrutiny assessment proceedings, the Assessing Officer made following additions/disallowances:

Sr. No.	Additions/disallowances made by Assessing Officers	Rs.
1.	Addition made on account of Unexplained Cash credit u/s.68 of the Act.	Rs.41,25,640/-
2.	Disallowance u/s.40(a)(ia) of the Act.	Rs.4,89,436/-
3.	Disallowance of salary paid to i) Asama Dhankwala ii) Shakishtha H. Dhankwala iii) Safina G. Dhankwala	Rs.99,840/-
4.	Ad-hoc disallowance of various expenditures viz. subscription & contribution, travelling allowances, vehicles maintenance and repairs.	Rs.15,000/-

3. Aggrieved by the assessment order dated 19.03.2013, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) vide impugned order confirmed the additions made by the Assessing Officer. Now, the assessee is in second appeal before the Tribunal assailing the findings of Commissioner of Income Tax (Appeals) confirming the additions. The grounds raised by assessee in appeal are as under:

*“1. The learned C.I.T.[A] has grossly erred in confirming the addition of Rs.41,25,640.00 made by the learned Assessing Officer u/s.68 of the IT. Act, 1961. While doing so the learned CIT[A] has failed to appreciate that the impugned amounts were discounts received which were offered for taxation in the subsequent years on receipt of the intimation from the supplier/upon reconciliation of accounts according to the method of accounting regularly followed by the appellant assessee. The said addition being devoid of merits the same may please be deleted.*

*2. The disallowance of Rs.4,89,436.00 confirmed by the learned C.I.T.[A] u/s.40[a][ia] of the IT. Act 1961, being patently illegal and bad in law the same may please be deleted.*

*3. The disallowance of Rs.99,84.00 confirmed by the learned C.I.T.[A] u/s. 40A[2][b] of the IT. Act 1961, being devoid of merits the same may please be deleted.*

*4. The ad-hoc disallowance of various expenses amounting to Rs.15,000.00 confirmed by the learned C.I.T.[A] being arbitrary, perverse and devoid of merits the same may please be deleted.*

*5. The appellant craves the permission to add, amend, modify, alter, revise, substitute, delete any or all grounds of appeal, if deemed necessary at the time of hearing of the appeal.”*

**Additional Ground :**

*“Without prejudice to Ground of appeal No.1 and by way of an alternate prayer the appellant assessee would like to submit that the addition of Rs.41,25,640.00 made by the learned Assessing Officer u/s. 68 of the I.T.Act 1961 on account of discount allegedly received by the appellant assessee during the relevant previous year from its various suppliers is confirmed by the Hon. Bench then a direction may please be issued to the learned Assessing Officer that the amounts of said discounts offered for taxation by the appellant for subsequent years be reduced from the taxable incomes of the respective years.”*

4. Shri Sunil Ganoo appearing on behalf of assessee submitted that the Assessing Officer has erred in making addition of Rs.41,25,640/- on account of unexplained cash credit. During assessment proceedings, the Assessing Officer found difference in balances as per party's accounts and as per assessee's books of account. The assessee explained that the difference is on account of discount given by the parties to the assessee. The Assessing Officer held that since the assessee is following mercantile system of accounting, the entire amount of discount received/receivable should have been accounted for and offered for taxation in assessment year 2010-11. However, the assessee

has offered the amount to tax as and when the discounts offered by suppliers are confirmed.

4.1 The ld. AR pointed that the assessee has already offered the amount of discount under consideration to tax in the subsequent assessment years. The assessee declare discount in his return of income as and when they are allowed to the assessee by suppliers. Since, the assessee has offered the discounts to tax in subsequent years, the addition made in the assessment year under appeal has resulted in double taxation of the same amount. The ld. AR contended that in the assessment year under consideration and subsequent assessment years, the income of the assessee is taxable at maximum tax rate, therefore, there is no loss of the revenue. The assessee has no intention of postponement of tax or to avoid payment of taxes.

4.2 The ld. AR made alternate prayer without prejudice to his earlier submissions, by way of additional ground that if the addition of Rs.41,25,640/- is to be confirmed then the discount offered for taxation in subsequent assessment years may be reduced from taxable income in the respective assessment years.

5. In respect of ground No. 2 of appeal, the ld. AR submitted that Authorities below have erred in making disallowance of Rs.4,89,436/-. The assessee has paid interest on deposits to four persons aggregating to Rs.4,89,436/- No tax at source was deducted on the interest payment as Form-15G was received from the said persons. The Assessing Officer made addition of the aforesaid amount merely on the ground that there was delay in furnishing copy of Form-15G to the office of Commissioner of Income Tax-I, Kolhapur. The ld. AR pointed that Co-ordinate Bench of the Tribunal in the case of Smt. Anandidevi Gairola Vs. Commissioner of Income Tax (Appeals) in

ITA No.1247/PN/2012 for assessment year 2006-07 decided on 30.09.2013 in similar circumstances, deleted the addition where Form-15G/15H were furnished belatedly.

6. In respect of ground No. 3, disallowance of Rs.99,840/- u/s.40A(2)(b) of the Act, the ld. AR submitted that the assessee had paid annual salary of Rs.83,200/- each to i) Asama Dhankwala ii) Shakishta H. Dhankwala and iii) Safina G. Dhankwala. Undisputedly, these three ladies are covered under section 40A(2)(b) of the Act. All these three ladies are Graduate and are helping the assessee in conducting business. The ld. AR contended that assessee carries its business from various locations. The assessee has a shop near Kolhapur Municipal Corporation and three godowns at Market Yard, Kolhapur. The assessee has shortage of staff. The assessee is receiving goods from various places and are delivered to various different places. The above said persons are assisting the assessee in managing business affairs.

6.1 The ld. AR submitted that keeping in view the fact that above said persons are Graduate and are receiving monthly salary of Rs.6,900/-, the salary paid to the said persons is under reasonable. The Assessing Officer disallowed 40% of the salary paid to the above said persons without any basis. The Commissioner of Income Tax (Appeals) confirmed the disallowance in a mechanical manner.

7. In respect of ground No. 4, disallowance of various expenses, the ld. AR submitted that the assessee had claimed expenditure of Rs.1,05,552/- in P & L account on account of subscription & contribution, travelling expenses and vehicle maintenance etc. The Assessing Officer without giving any reason, made ad-hoc disallowance of Rs.15,000/- from aforesaid expenditure.

8. On the other hand, Shri Ajay Modi representing the Department vehemently defended the order of Commissioner of Income Tax (Appeals). The ld. DR submitted that the impugned order is well-reasoned and balanced. The assessee has failed to substantiate his submissions before Authorities below with cogent evidence.

9. We have heard the submissions made by representatives of rival sides and have perused the orders of Authorities below.

9.1 In ground No. 1 of appeal the assessee has assailed addition of Rs.41,25,640/- on account of unexplained cash credit u/s. 68 of the Act. The ld. AR of the assessee contended that this amount represents discount. The Commissioner of Income Tax (Appeals) has rejected the contentions of assessee by observing as under:

*“4.Before the undersigned, the explanation of the assessee remains the same. It was submitted that since the purchases made by the assessee from various parties have been proved, the credit entries pertaining to corresponding purchases should be accepted. Having considered assessee's explanation, I find that the appellant's contention that discount is accounted for as and when received is not backed by evidence. It cannot be accepted that the appellant does not maintain accounts of customers and in case it maintains, the same cannot be reconciled customer-wise. Plain confirmation filed before the assessing officer without account extracts cannot be accepted on face value. Before me, the authorized representative of the appellant has filed a chart showing therein that discounts have been credited in financial years 2010-11, 2011-12 and 2012-13. There is no reconciliation of how much was the discount received, how much was credited and there is no evidence regarding crediting of the amounts in these years. Therefore, explanation of appellant cannot be accepted. The ground is rejected and addition is sustained.”*

Before us, the ld. AR of the assessee could not controvert the findings of the Commissioner of Income Tax (Appeals). The only submission by ld.AR is that the difference is on account of discounts received from suppliers. Merely

on bald assertions the addition cannot be deleted. Accordingly, **ground No. 1 raised in appeal by assessee is dismissed.**

9.2 The ld. AR of the assessee has raised alternate plea by way of additional ground to reduce the amount of discount offered by assessee in subsequent assessment years from taxable income. The ld. AR submitted that assessee has offered discounts in the subsequent assessment years, as and when they were confirmed by the suppliers. The addition of the discount in the assessment year under appeal would result in double taxation of the same amount. We find merit in the submissions made by ld. AR of the assessee. However, this ground requires verification of facts. Accordingly, we deem it appropriate to remit the additional ground raised by assessee in appeal to the file of Assessing Officer for verification of the facts. If the assessee has offered discounts in the subsequent assessment years, the same may be reduced from taxable income of the respective assessment years, in accordance with law. Accordingly, **additional ground raised by assessee is allowed for statistical purposes.**

10. In ground No. 2 of appeal, the assessee has assailed disallowance of Rs.4,89,436/- u/s. 40(a)(ia) of the Act. It has been submitted by the ld. AR of the assessee that this disallowance has been made as assessee has furnished Form-15G belatedly. We find that Pune Bench of Tribunal in the case of Smt. Anandidevi Gairola Vs. Commissioner of Income Tax (Appeals) (supra.) has allowed the claim of assessee where Form-15G were furnished beyond the time specified under the Act. The relevant extract of the order of Tribunal is reproduced herein below:

*“9. In the case of Vipin P. Mehta Vs. ITO (supra) the assessee had paid interest to 34 parties aggregating Rs.7,87,291/ - but did not deduct tax at*

*source u/s.194A. It was claimed by the assessee that all the payees to whom the interest was paid have furnished declarations in Form No. 15G/15H to the assessee. The assessee stated before the Assessing Officer that the said forms were filed belatedly by mistakes. The Tribunal also observed that even if the assessee have belatedly filed the declarations with the office of CCIT /CIT beyond the time limit specified in Sec.197A(2) that amount to omission or default for which the penalties prescribed and no disallowance u/s. 40(a)(ia) can be made.*

*10. In the case of Karwat Steel Traders Vs. ITO (supra) the assessee has paid the interest but did not deduct the tax at source in respect of 17 parties. It was claimed that Form No. 15G/15H were raised. The Assessing Officer by invoking the provisions of Sec.40 (a)(ia) of the Act made the disallowance to the extent of Rs.5,30,429 /-.The Tribunal followed a decision in the case of Vipin P. Mehta Vs. ITO (supra) and held that even if the assessee has delayed the filing of the copies of the Form No.15H/15G beyond the time limit specified in Sec.197A(2) that was a distinct omission or default for which penalty is prescribed.*

*11. In both the above cases, it is seen that either the Forms were filed during the course of assessment proceedings or belatedly in the present case. The Assessing Officer has nowhere doubted that the assessee had not received the Forms in question i.e. the 15G/15H beyond end of financial year but disallowance is merely based on the reason of violation of Rule for not sending the copies of the said forms to the office of the CCIT or CIT. In our opinion, the principles laid down in the case of Vipin P. Mehta Vs. ITO (supra.) are squarely applicable to the assessee's case. We, accordingly, following the decision in the case of Vipin P. Mehta Vs. ITO (supra.), allow the claim of the assessee and delete the addition, accordingly, Ground No. 2 is allowed."*

Thus, in view of the facts of the case and decision of Co-ordinate Bench of the Tribunal, we find merit in the ground raised by assessee. Accordingly, disallowance of Rs.4,89,436/- is directed to be deleted. Thus, **ground No. 2 raised in appeal by assessee is allowed.**

11. In ground No. 3, the assessee has assailed disallowance of Rs.99,840/- u/s. 40A(2)(b) of the Act, The assessee has paid salary to i) Asama Dhankwala ii) Shakishta H. Dhankwala and iii) Safina G. Dhankwala at the rate of Rs.83,200/- per annum each. The ld. AR submitted that all the above said persons are graduate and are assisting assessee in managing business. The assessee is conducting its business from various places. The assessee has a shop near Kolhapur Municipal Corporation and three go-downs at Market Yard. The above said persons are helping the assessee in managing affairs of

business efficiently. In so far as reasonability of expenditure is concerned, the ld. AR of the assessee stated at Bar that all the three ladies are graduate. Taking into consideration entirety of facts, we are of considered view that salary of Rs.83,200/-per annum for each of the ladies, appears to be reasonable. The Assessing Officer before making disallowance of 40% has not made any enquiries to find out the salary paid for conducting similar work. The Assessing Officer made ad-hoc disallowance and the Commissioner of Income Tax (Appeals) upheld the same in a mechanical manner. Therefore, in our view the disallowance of Rs.99,840/- u/s.40A(2)(b) is not warranted and thus, the same is directed to be deleted. Accordingly, **ground no. 3 raised in appeal by assessee is allowed.**

12. In ground No. 4 of appeal, the assessee has assailed ad-hoc disallowance of Rs.15,000/-. The assessee has claimed total expenditure of Rs.1,05,552/- on account of vehicle maintenance, repairs etc. The Assessing Officer made ad-hoc disallowance of Rs.15,000/- as the expenses were supported by self made vouchers and on the premise that there is an element of personal expenditure. The disallowance of lump sum amount of Rs.15,000/- in the facts of the case appears to be reasonable and justified. We are, therefore, not inclined to interfere with the findings of Assessing Officer/ Commissioner of Income Tax (Appeals). Accordingly, **ground No. 4 raised in appeal by assessee is dismissed.**

13. The ground No. 5 raised in appeal is general in nature and hence, requires no adjudication.

14. In the result, appeal of the assessee is partly allowed in the terms aforesaid.

Order pronounced on Wednesday, the 25<sup>th</sup> day of April, 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 : 25<sup>th</sup> April, 2018

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (appeals), Kolhapur.
4. The CIT-I/II, Kolhapur /CIT (Central), Kolhapur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//True Copy //

आदेशानुसार / BY ORDER,

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