

आयकर अपीलीय अधिकरण पुणे न्यायपीठ एक-सदस्य मामला पुणे में

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "SMC", PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य के समक्ष  
BEFORE MS. SUSHMA CHOWLA, JM

आयकर अपील सं. / ITA No.520/PUN/2017  
निर्धारण वर्ष / Assessment Year : 2011-12

Pandurang Dayanand Hiremath,  
166/1/2, Kadgaon,  
Gadhinjaj, Kolhapur – 416502 .... अपीलार्थी/Appellant

PAN: ADMPH5451K

Vs.

The Income Tax Officer,  
Ward 1(4), Kolhapur .... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : None  
प्रत्यर्थी की ओर से / Respondent by : Shri Mukesh Jha

सुनवाई की तारीख / Date of Hearing : 18.04.2018	घोषणा की तारीख / Date of Pronouncement: 25.04.2018
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**आदेश / ORDER**

**PER SUSHMA CHOWLA, JM:**

The appeal filed by the assessee is against the order of CIT(A)-1, Kolhapur, dated 05.01.2017 relating to assessment year 2011-12 against order passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

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

1. *The learned CIT(A)-1, Kolhapur erred in law & on facts in sustaining the incorrect disallowance of Rs.26,80,721/- made by the learned AO by invoking Sec 40A(3) of the Income Tax act 1961.*

2. *The learned CIT(A)-1, Kolhapur appeals erred in rejecting the explanation filed during the course of the hearing in which the payments made by Crossed-Account payee cheque to the extent of Rs. 1,69,705/- for Akshay Traders & Rs. 87,290/- for B R Traders were evidenced by confirmation letter and bank statement & therefore these payments do not attract any disallowance u/s 40A(3).*
3. *The learned CIT(A)-1, Kolhapur appeals erred in ignoring the fact that all the payments were for agricultural produce, directly made to the farmer or indirectly made through traders & kachha aartiyas. These payments are made for purchase of agricultural produce namely, makka & soya bean which ultimately goes to the farmer and cultivators which is exempt under Income Tax Rules.*
4. *The learned CIT(A)-1, Kolhapur appeals erred in confirming the disallowance of the payment for purchase of agricultural produce for which the quantitative details are available. The assessee does not have either opening stock or closing stock. All the goods purchased are sold it being agricultural produce which may deteriorate if it is kept in stock. Since the quantity purchased and quantity sold matches in all respects, any disallowance of payment for purchase, may result in mismatch of purchase quantity & sale quantity. The CIT(A)-1, Kolhapur erred in not considering this fact of mismatch of quantity stock.*
5. *The learned CIT(A)-1, Kolhapur appeals erred in disallowing the purchases which are otherwise supported by bills and are made from identifiable persons. In view of the above facts, disallowance of Rs. 26,80,721/- is not justifiable.*
6. *Alternatively & without prejudice, the learned CIT(A)-1, Kolhapur appeals erred in fact & also in law, in not appreciating that the situations exempting rigors of Sec 40A(3) are not limited to those contained in Rule 6DD of IT Rules. The IT Authorities erred in not appreciating that once payee is identified, once transaction is bonafide & commercial expediency is established, disallowance u/s 40A(3) is uncalled for.*
7. *The learned CIT(A)-1, Kolhapur appeals erred in confirming the income which is earned in the rural & the most backward area of the Kolhapur district wherein the income level of small assesses is always below the average and near about the basic taxable limit of the income.*

3. The issue which arises in the present appeal is against the disallowance made under section 40A(3) of the Act at ₹ 26,80,721/-.

4. Despite service of notice, none appeared on behalf of assessee nor any application was moved for adjournment and because of smallness of the issue, present appeal is decided after hearing the learned Departmental Representative for the Revenue.

5. Briefly, in the facts of the case, the assessee had furnished return of income declaring total income of ₹ 4,67,127/-. The assessee was engaged in trading of agricultural produce and Soya. On verification of bank accounts, the Assessing Officer noted that the assessee had made payments to different traders in excess of ₹ 20,000/- by cash / bearer cheques. The list of said payments were drawn up by the Assessing Officer and was enclosed as Annexure-A to the assessment order. The total payments made by the assessee in contravention of provisions of section 40A(3) of the Act were ₹ 26,80,726/-. The assessee was confronted with the same. However, the Assessing Officer held the assessee to have defaulted in view of section 40A(3) of the Act and hence, expenditure of ₹ 26,80,726/- was disallowed.

6. Before the CIT(A), contention of assessee was that the payment was made for agricultural produce to the farmers either directly or indirectly. In support thereof, the assessee filed written submissions dated 18.02.2015 along with confirmation from the traders and the agriculturists. The assessee contended that he was a dealer in agricultural produce i.e. Makka, wherein he purchases agricultural produce from farmers and makes payment to the farmers by withdrawing the amounts from bank. The payments made to farmers for agricultural produce was covered under the provisions of Rule 6DD(e)(i) of the Income Tax Rules, 1962 (in short 'the Rules'). Annexure-I was attached, which reflects the details of such payments made to farmers. He further explained that on certain occasions, Makka was purchased from a trader, who in turn, acts as commission agent on behalf of farmers. The payment made by the assessee to such trader was directly passed on to the respective farmers and the details along with clarification from the trader that he had made payments to the farmers for agricultural produce were placed in Annexure-2 to the letter. It was further pointed out that payment in two cases of

traders, namely Akshay Enterprises and B R Traders made from Federal Bank account number 78, were made through crossed account payee cheque. The assessee also enclosed evidences in this regard. The two payments totaled to ₹ 2,56,996/- and it was submitted that the said payment by crossed cheques do not attract the provisions of section 40A(3) of the Act. The remaining sum of ₹ 24,23,731/- was held to be outside the purview of section 40A(3) of the Act, in view of Rule 6DD(e)(i) of the Rules. The CIT(A) forwarded the said evidence to the Assessing Officer for his examination and comments. The Assessing Officer submitted its remand report, copy of which was given to the assessee. However, the assessee despite several opportunities, allowed, failed to appear before the CIT(A), who decided the appeal on the basis of material available on record. The CIT(A) notes that the assessee had filed confirmation letters received from the farmers and the traders. He further observed that the Assessing Officer had no occasion to verify the said entries, wherein the payments were made to farmers and traders. In fact, the Assessing Officer in the remand report had categorically mentioned that no supporting evidences were filed before him during the course of assessment proceedings as well as during appellate proceedings. Hence, the claim of assessee of cash payments could not be verified. The Assessing Officer further observed that the assessee was given an opportunity to produce farmers who were paid in cash or through bearer cheques but not a single person was produced. The CIT(A) further held that the payments made by assessee were on account of three categories i.e. (a) payment to farmers, (b) payment made to traders and (c) payments made through crossed account payee cheques. The CIT(A) was of the view that though exception is provided in rule 6D of the Rules for making payments to agriculturists in cash above ₹ 20,000/- but the same could not be applied without the assessee having established the same with necessary documentary evidence. With respect to payments to traders, the CIT(A) held that there was

no exception provided in the Rules. In respect of payments through cheque, in the absence of sufficient details, the same was also not accepted. The CIT(A) further comments on the evidence filed i.e. confirmation letters of agriculturists. He observed that all the confirmations filed were stereo typed and had no details except for mentioning the bank name, account number and amount. Thus, the plea of assessee was rejected and addition of ₹ 26,80,726/- was upheld.

7. The assessee is in appeal against the order of CIT(A).

8. Despite service of notice, none appeared on behalf of assessee nor any application was filed for adjournment. The appeal is decided after hearing the learned Departmental Representative for the Revenue because of the issue involved. The only issue which is raised in the present appeal is against invoking of provisions of section 40A(3) of the Act. As per the said section, there is an embargo on cash payments above ₹ 20,000/-. The said section provides that where the assessee incurs any expenditure, in respect of which payment or aggregate of payment is made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee cheque exceeding ₹ 20,000/-, then no deduction is to be allowed in respect of such expenditure. Rule 6DD of the Rules, however, provides exception to provisions of section 40A(3) of the Act. The said rule lays down that even in cases where payment made to a person in a day otherwise than by an account payee cheque or bank draft exceeds ₹ 20,000/-, then no disallowance was warranted under section 40A(3) of the Act, in the cases and circumstances specified thereunder. We are concerned with clause (e) of Rule 6DD of the Rules, which provides that where the payment is made for purchase of agricultural or forest produce or the produce of animal husbandry or diary or poultry farming, fish or

fish products or the products of horticulture or apiculture, to the cultivator, grower or producer of such articles, produce or products. Hence, in order to invoke provisions of section 40A(3) of the Act, the first condition is that the payment should be made otherwise than crossed cheque or bank draft exceeding ₹ 20,000/- in a day. In respect of two of the payments, the case of assessee is that the same were paid through cheques. The evidences in this regard were filed. However, the same were not accepted by the CIT(A) as the letter did not mention any details of any account or payments received through account payee cheques. The assessee claims that it had made the payments through cheques for which evidence was also filed, the name of person was also clear, then in such circumstances, there was no merit in disallowing the said amount being made in cash.

9. Now, coming to the second set of payments, where the assessee was engaged in sale and purchase of agricultural produce; the assessee claims that the payments were made either directly to the farmers, who sold their agricultural produce or through traders to the farmers, who in turn, also sold their agricultural produce to the assessee. Under Rule 6DD(e)(i) of the Rules, where payment is made for agricultural or forest produce to the cultivators or the growers though in cash, but the same is not hit by the provisions of section 40A(3) of the Act. The assessee has filed the evidence in this regard but the CIT(A) has commented on the evidence saying that it contains certain bank account numbers. There is no merit in the observations of CIT(A), since the payment to agriculturists was made in cash. The assessee had furnished the details and the evidence in this regard before the CIT(A) as is mentioned in the written submissions filed by the assessee. The assessee was trading in agricultural produce i.e. Makka, against which aforesaid payments were being made. In view thereof, where the business of assessee involved dealing in

agricultural produce, then the case of assessee merits to be accepted and there is no basis for making any disallowance under section 40A(3) of the Act.

10. Coming to the second set of payments i.e. to the traders, where the payments are made to traders, which in turn, directly passed on to the respective farmers is also not hit by provisions of section 40A(3) of the Act being payments made to the agriculturists. Accordingly, disallowance made by the CIT(A) is reversed. The Assessing Officer is directed to delete the disallowance of ₹ 26,80,721/-.

11. In the result, appeal of assessee is allowed.

Order pronounced on this 25<sup>th</sup> day of April, 2018.

**Sd/-**  
**(SUSHMA CHOWLA)**

**न्यायिक सदस्य / JUDICIAL MEMBER**

पुणे / Pune; दिनांक Dated : 25<sup>th</sup> April, 2018.

*GCVSR*

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-1, Kolhapur;
4. The Pr.CIT-1, Kolhapur;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे, एक-सदस्य  
मामला / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

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