

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1351/Chny/2018

निर्धारण वर्ष / Assessment Year : 2014-15

M/s Mothers Commerce
Company Pvt. Ltd., First Floor,
No.40, Montorsier Street,
Puducherry – 605 001.

v. The Income Tax Officer,
Ward – 1,
Puducherry.

PAN : AAACM 5355 M

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी/Appellant by

: Sh. B. Ramakrishnan, CA

प्रत्यर्थी/Respondent by

: Shri Vijay Kumar Punnah,
Jr. Standing Counsel

सुनवाई की तारीख/Date of Hearing : 10.07.2018

घोषणा की तारीख/Date of Pronouncement : 19.09.2018

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals), Puducherry, dated 01.03.2018 and pertains to assessment year 2014-15.

2. Sh. B. Ramakrishnan, the Ld. representative for the assessee, submitted that the first issue arises for consideration is

disallowance of ₹44,78,207/- under Section 40A(3) of the Income-tax Act, 1961 (in short 'the Act'). Referring to the assessment order, the Ld. representative submitted that the assessee is engaged in the business of manufacturing and export of incense sticks, taperstries, perfumes and handicrafts. In the course of business, according to the Ld. representative, the assessee purchased incense sticks from three proprietorship concerns. The proprietors are directors in the assessee-company. According to the Ld. representative, part of amount was paid by cheque. However, the remaining amount of ₹44,78,207/- was paid by cash. Referring to the ledger account of the assessee-company, the Ld. representative submitted that all the payments were made less than ₹20,000/- in a day. In other words, no payment exceeded ₹20,000/- in a day. Therefore, according to the Ld. representative, Section 40A(3) of the Act is not applicable at all.

3. On the contrary, Shri Vijay Kumar Punnah, the Ld. Jr. Standing Counsel for the Revenue, submitted that the vouchers produced by the assessee were found to be afterthought and cooked up. According to the Ld. Jr. Standing Counsel, the Assessing Officer found that the expenses were booked in cash in

such a manner which enables the assessee-company to bypass the statutory burden and obligations cast under the provisions of the Income-tax Act. On a query from the Bench when the payment does not exceed ₹20,000/-, how can the Assessing Officer disallow the claim of the assessee? The Ld. Jr. Standing Counsel submitted that the disallowance was not made only under Section 40A(3) of the Act, it was also made since the payment was not genuine. Since the Assessing Officer doubted the genuineness of payment, according to the Ld. Jr. Standing Counsel, the disallowance was made.

4. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that the payment made by the assessee does not exceed ₹20,000/- in a day. We have carefully gone through the provisions of Section 40A(3) of the Act which reads as follows:-

“40A. (3) Where the assessee incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees, no deduction shall be allowed in respect of such expenditure.”

5. In view of the above, when the assessee incurs any expenditure in respect of payment or aggregate of payments made to a person in a day by cash exceeding ₹20,000/-, no deduction shall be allowed in respect of such expenditure. In this case, payment does not exceed ₹20,000/-. Therefore, the provisions of Section 40A(3) of the Act may not be applicable to the facts of the case. The Assessing Officer also found that the assessee booked the expenditure in cash in such a manner which enables the company to bypass the statutory burden and obligations cast under the Act. The Assessing Officer has found that the claim of the assessee is afterthought and cooked up. The CIT(Appeals) at para 5.4 of his impugned order found that the accounting procedure was not followed, therefore, this led to conclude that the payments were not genuine.

6. Since the Assessing Officer doubted the genuineness of payment, he has not examined whether the incense sticks were used in manufacturing activity by the assessee or not? It needs to be examined whether the assessee could have manufactured incense sticks or other products and sold the same for the purpose of earning the profit without corresponding purchase? These

aspects were not examined by the Assessing Officer. Therefore, this Tribunal is of the considered opinion that the matter needs to be re-examined by the Assessing Officer. Accordingly, orders of both the authorities below are set aside and the entire issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter and bring on record the entire factual aspect with regard to purchase of incense sticks and payments of cash and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.

7. The next ground arises for consideration is disallowance of bad debts to the extent of ₹8,20,856/-.

8. Sh. B. Ramakrishnan, the Ld. representative for the assessee, submitted that the advance made by the assessee for purchase of raw material during the assessment year 1993-94 was written off in the books of account as bad debt. However, according to the Ld. representative, the Assessing Officer disallowed the claim of the assessee on the ground that the details regarding steps taken by the assessee to recover the amount were not placed before him. The fact remains that the debt was outstanding for the last 23 years, therefore, the assessee has written off in the books of account.

According to the Ld. representative, once the debt was written off in the books of account as bad debt, the Assessing Officer cannot doubt the genuineness.

9. On the contrary, Shri Vijay Kumar Punnah, the Ld. Jr. Standing Counsel for the Revenue, submitted that even though the assessee claims that the advance was made for the purchase of raw material during the year 1993-394, no material was filed before the Assessing Officer. According to the Ld. Jr. Standing Counsel, the so-called bad debt of ₹8,20,856/- was classified as "other expenses without furnishing any details of the same, therefore, the Assessing Officer found that the so-called bad debt claimed cannot be allowed and the CIT(Appeals) has rightly confirmed the disallowance made by the Assessing Officer.

10. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that the assessee claims ₹8,20,856/- as bad debt. The Assessing Officer disallowed the same on the ground that the so-called bad debt was classified under the head "Other Expenses" and the assessee has not furnished any details of the same. The Assessing Officer has also found that the steps taken by the

assessee to recover the amount were not furnished to him. This Tribunal is of the considered opinion that when the assessee has written off in the books of account the debt outstanding, it would not be proper for the Assessing Officer to examine the step taken by the assessee to recover the amount. The assessee, being a businessman, was the best judge to decide whether the outstanding amount is recoverable or irrecoverable. When the assessee found that it is difficult to recover the money and written off in the books of account, then the Assessing Officer cannot doubt the genuineness.

11. In the case before us, the assessee has classified the debt under the head "Other Expenses" without furnishing any details. Therefore, this Tribunal is of the considered opinion that the matter needs to be re-examined. Accordingly, orders of both the authorities below are set aside and the disallowance of ₹8,20,856/- towards bad debt is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter in the light of the material that may be filed by the assessee and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.

12. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the court on 19th September, 2018 at Chennai.

sd/-

(एस जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 19th September, 2018.

Kri.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A), Puducherry
4. Principal CIT, Puducherry
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.