

**IN THE INCOME TAX APPELLATE TRIBUNAL
RANCHI BENCH, RANCHI**

Before **Shri S.S.Godara, Judicial Member** and
Dr. A.L. Saini, Accountant Member

ITA No.34/Ran/2016 Assessment Year :2010-11

M/s S.P. Enterprises 55, Mahto Para Road, Jugsalai, Jamshedpur- 831006 [PAN No.AATFS 9150 L]	V/s.	DCIT, Range-3, Jamshedpur
अपीलार्थी /Appellant .. प्रत्यर्थी/Respondent		

ITA No.309-310/Ran/2016 Assessment Year: 2009-10
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M/s S.P. Enterprises Plot No. 251 Tata-Kandra Main Road, Adityapur, Jamshedpur-831013 [PAN No.AATFS 9150 L]	V/s.	Income Tax Office, Ward-1(5) Jamshedpur
अपीलार्थी /Appellant .. प्रत्यर्थी/Respondent		

आवेदक की ओर से/By Assessee	Shri Devesh Poddar, Advocate
राजस्व की ओर से/By Revenue	Shri Chandan Das, JCIT-DR
सुनवाई की तारीख/Date of Hearing	10-01-2019
घोषणा की तारीख/Date of Pronouncement	15-02-2019

आदेश /ORDER

PER BENCH:-

These three assessee's appeals for assessment year(s) 2010-11 & 2009-10 arise against the Commissioner of Income Tax (Appeals)-

Jamshedpur's separate orders dated 27.11.2015 & 16.08.2016 passed in case Nos.97.JSR/2013-14; 07, 72/JSR/2015-16 involving proceedings u/s 143(3) r.s. 263 r.s. 271E of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case files perused

2. We come to assessee's appeal ITA No. 309/Ran/2016. Its first substantive ground challenges correctness of both the lower authorities' action invoking sec.40A(3) disallowance of Rs.69.91 lac regarding purchases and other transaction with eight payees. We notice from the CIT(A)'s order under challenge in para 4.2 that he has simply brushed aside assessee's explanation on the ground that CIT had exercised his sec. 263 revisional direction issued to the Assessing Officer for framing the afresh assessment year. He has failed to appreciate the fact that the instant second round of litigation is on merits.

3. It further emerges from the case file that the assessee has not paid any amount exceeding Rs.20,000/- in the course of a day in case of M/s K.S. Enterprises involving disallowance of Rs.10 lac. Regarding other payees, we find that payments in issue had been made on the last day of the relevant accounting period. Although we do not stress the fact that there are no transaction on the said date but at the same time it cannot be ruled out that accounts are squared off on closing day of the year only. Hon'ble Calcutta high court's decision in ITA No.202 of 2008 CIT vs. CRESCENT EXPORT SYNDICATE dated 30.07.2008 also concludes Sec. 40A(3) cash payment disallowance as follows:

"The learned Counsel appearing for the appellant argued that the assessee is 100% export oriented firm, exporting leather goods viz. Wallets and different types of bags. The total export turnover during the year (FOB value) Rs.19,51,73,720/- and purchases shown at Rs.11,65,97,523/-. Out of the said purchase, the purchase from 15 parties amounting to Rs.83,44,822/- and the seller could not be produced in assessment, hence the A.O. disallowed the entire purchase and added Rs.83,44,822/-. In appeal, before the Id. CIT(A)-XIX, Kolkata the appellant submitted that it maintains stock book inventorised the purchase of leather, leather issued for cutting, and issued to fabricator finally for finishing the goods as per export order. The Id. CIT(A) directed the A.O to examine those books and to submit the remand

report. In the remand report the A.O. has admitted 'on verification of the purchase details, it is seen that the purchases amounting to Rs.83,44,822/- made from different parties are entered in the stock register and put to the various stages of manufacturing process. The assessee also produced bills in respect of all purchase made from these 15 parties and finally the Id. CIT(A) has held as regards the purchase, it is seen that these were recorded in the stock register, their consumption is also recorded therein, up to the stage of final production. All these records are audited. They are produced before the Assessing Officer for examination who had not been able to point out any defect in it. Under the circumstances the purchases are considered to be genuine. So the purchases have been held to be genuine. It also appears that the purchases have been held to be genuine by the learned CIT (Appeal) but the learned CIT(Appeal) has invoked Section 40A(3) for payment exceeding Rs.20,000/- since it is not made by crossed cheque or bank draft but by bearer cheques and has computed the payments falling under provisions to Section 40A(3) for Rs.78,45,580/- and disallowed @ 20% thereon Rs.15,69,116/-. It is also made clear that without the payment being made by bearer cheque these goods could not have been procured and it would have hampered the supply of goods within the stipulated time. Therefore, the genuineness of the purchase has been accepted by the Id. CIT (Appeal) which has also not been disputed by the department as it appears from the order so passed by the learned Tribunal. It further appears from the assessment order that neither the Assessing Officer nor the CIT (Appeal) has disbelieved the genuineness of the transaction. There was no dispute that the purchases were genuine.

Accordingly, in our opinion, the learned Tribunal has correctly come to the conclusion by deleting the addition of Rs.15,69,116/- under section 40A(3) of the Act. On the other ground as it appears that the CIT (Appeal) has been directed to reconsider the matter. In view of that we do not think that any substantial question of law is involved in this matter. Hence the appeal being ITA NO. 202 of 2008 is dismissed.”

4. We adopt the above detailed reasoning *mutatis mutandis* to delete the impugned sec. 40A(3) disallowance of Rs.69.91 lac. The assessee's sole ground as well as its main appeal ITA 309/Ran/2016 succeeds. Its second appeal ITA No.310/Ran/2016 involves consequential penalty proceedings u/s 271E of the Act. The same is also accepted since the impugned penalty has no legs to stand.

5. Coming to assessee's third appeal ITA No. 34/Ran/2016, its first substantive ground challenging sec. 40A(3) disallowance of ₹ 1 lac is accepted as per our foregoing detailed discussion.

6. The assessee's second substantive ground seeks to delete 20% disallowance on various expenses in the nature of freight charges, job contract expenses and site expenses to the tune of Rs.12.51 lac made in lower proceedings. It transpires during the course of hearing that neither the assessee has been able to prove the impugned expenditure by way of sufficient cogent explanation nor the lower authorities have quoted any comparable instance in preceding and succeeding assessment years. We therefore restrict the impugned disallowance of 20% to the tune of 8% on estimating basis with a rider that the same shall not be treated as precedent. The assessee's instant second substantive ground is partly accepted.

7. Next comes commission disallowance of Rs.6,71,212/- claimed @ 400 per tone in iron products business. There is no dispute that the learned assessing officer had himself accepted similar commission expense in earlier assessment year(s). His case in the impugned assessment year appears to be that the assessee's turnover has been reduced as compared to said earlier assessment years. All the relevant details of the payee party(ies) have already placed on record. We conclude in these facts that impugned disallowance in absence of any genuineness issue per se cannot be sustained. We therefore delete this commission expenditure disallowance of Rs.6,71,212/-.

8. Lastly comes the assessee's challenge to section 68 unexplained cash credits addition of Rs.41 lac made in both the lower authorities in case of M/s Bihar Foundry and Casting Ltd.. The clinching fact that emerges from a perusal of case file is that this amount forms closing balance figure of preceding assessment year and opening figure of the impugned assessment year. Meaning thereby that the same stood accepted in the earlier

assessment year. Be that as it may, we delete the impugned addition since the assessee's books have not been credited the impugned sum in the impugned assessment year. The assessee's first appeal ITA No.34/Ran/2016 is partly allowed.

9. The assessee's two appeals ITA No.309 and 310/Ran/2016 are allowed & ITA No.34/Ran/2016 is partly allowed in above terms.

Order is pronounced in accordance with Rule 34(4) of the ITAT Rules by putting on Notice Board on 15/02/2019

Sd/-

(लेखा सदस्य)

(Dr. A.L. Saini)

(Accountant Member)

Ranchi,

Sd/-

(न्यायिक सदस्य)

(S.S.Godara)

(Judicial Member)

*Dkp

दिनांक:- 15/02/2019 Ranchi I

आदेश की प्रतिलिपि अद्येष्ठित / Copy of Order Forwarded to:-

1. आवेदक Assessee-M/s S.P. Enterprises 55, Mahto Para, Rd, Jugsalai Jamshedpur-831006/
M/s S.P. Enterprises PI No.251 Tata-Kandra Main Rd. Adityapur, Jamshedpur-831013
2. राजस्व/Revenue-DCIT, Range-3, ITO Wd-1(5), Jamshedpur
3. संबंधित आयकर आयुक्त / Concerned CIT Ranchi
4. आयकर आयुक्त- अपील / CIT (A) Ranchi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, / DR, ITAT, Ranchi
6. गार्ड फाइल / Guard file.

By order/आदेश से,

/True Copy/

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, रांची