

IN THE INCOME TAX APPELLATE TRIBUNAL
RANCHI BENCH, RANCHI

(Before Shri S. S. Godara, J.M. & Dr.A.L.Saini, A.M.)

ITA No. 365/Ran/16 : Asstt. Year : 2007-08
ITA No. 367/Ran/16 : Asstt. Year : 2009-10
ITA No. 368/Ran/16 : Asstt. Year : 2010-11

Sri Birendra Prasad Prop: M/s. New Maa Gaytri Stores,PAN: AEIPP0099Q	Vs	I.T.O., Ward 3(1), Bokaro
(APPELLANT)		(RESPONDENT)

Appellant/Assessee by : Shri Devesh Poddar Advocates, ld.ARs
Respondent/Revenue by : Shri P.K. Mondal, JCIT, ld. DR

Date of Hearing : 11-01-2019	Date of Pronouncement: 05 -04-2019
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ORDER

PER BENCH:

The captioned three appeals filed by the assessee, are directed against the separate orders, all dated 07-10-2016 passed by the ld. Commissioner of Income-tax (Appeals), Hazaribagh, which in turn arise out of separate assessment orders passed by the Assessing Officer u/s. 263/143(3)/147 of the Income-Tax Act, 1961 (in short, the 'Act'), all dated 28-01-2016.

2. Since these three appeals pertain to the same assessee, different assessment years, common and identical issues are involved, therefore, these have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

3. First, we will take up the assessee's appeal – ITA No. 365/Kol/2016 for the A.Y 2007-08.

ITA No. 365/Kol/2016 A.Y 2007-08 (by the assessee)

4. The grounds of appeal raised by the assessee in ITA No. 365/Ran/2016 for the A.Y 2007-08 are as follows:-

1. For that appellant received gift of Rs.1 ,50,000/- from Sri Dilip Prasad Burnwal. The evidence in support of gift received was submitted and was accepted by Ld. A.O. However, in course of re-assessment proceedings Vis 263/147/143(3) Ld. A.O. issued letter U/S 133(6) for personal appearance of Sri Dilip Prasad Burnwal who expired on 22.11.2007. Further documentary evidence could not be produced since the donor had expired. Fact of gift was reflected in the Return of Income filed. Ld. A.O. while making-the assessment u/s 143(3)/147 had accepted the gift received from Sri Dilip Kumar Burnwal "Mausa" of the appellant. The addition made u/s 68 is unjustified, arbitrary and illegal.

2. For that appellant received a gift of Rs.1,50,000/- from his brother Sri Ravindra Kumar Sri Ravindra Kumar is also assessed by Income Tax Officer, Bokaro. The documents in support of gift received were filed. Ld. A.O. was not justified in bringing to tax amount of gift u/s 68 of the Income Tax Act.

3. For that interest u/s 234A and 234B can only be charged on the returned income and not on the assessed income following the decision of Hon'ble Jharkhand High Court.

4. For that other grounds in detail will be argued at the time of hearing.

5. Brief facts qua the issue are that appellant received gift from relatives. AO has made addition, but the appellant has objected the addition of cash credit u/s 68 of Rs.1 ,50,000/- received from Dilip Prasad Burnwal who died on 22/11/2007 much

before the date of the Assessment Order. The Assessing Officer has noted in the Assessment Order that the appellant was requested to furnish any documentary evidence like copy of Income-tax return/bank statement to prove the genuineness of gift but the appellant failed to prove the same by any documentary evidence. As a result the Assessing Officer concluded that the genuineness of the gift could not be established. Hence, the gift amount of Rs. 1,50,000/- was treated as unexplained cash credit and the same was added back to the total income of the appellant u/s 68 of the IT. Act.

6. On appeal, Ld. CIT(A) confirmed the addition; observing the following:

“3.2 In view of the above finding of the Assessing Officer, I hold; relying on the Hon'ble Supreme Court decision in the case of CIT Vs.P. Mohan Kala (2007) 291 ITR, 278 and in the case of Sumati Dayal VS.CIT(J 995) 214 ITR 801 that if the cash credits are not explained and proved to the satisfaction of the Assessing Officer, the same can be added as unexplained cash credit u/s. 68 of the I.T Act. The Assessing Officer's action is, therefore, upheld. The appellant fails on his grounds of appeal.

7. Aggrieved, by the order of CIT(A), the assessee is in appeal before us.

8. We have given a careful consideration to the rival submissions and perused material available on record. We note that the AO has failed to point out that the gift received from Shri Dilip Prasad Burnwal is bogus. We also note that the giver of the gift, Shri Dilip Prasad Burnwal died on 22-11-2007, which is much before the date of assessment order. Therefore, it was difficult of the assessee to produce Shri Dilip Prasad Burnwal before the AO. Therefore, the genuineness of the gift is not doubted. Hence, we delete impugned addition of Rs.1,50,000/-. Grounds raised by the assessee in ITA No. 365/Ran/16 for the A.Y 2007-08 are allowed.

8. Now we deal with the assessee's appeals in ITA Nos. 367 & 368/Ran/2016 for the A.Ys 2009-10 & 2010-11, for A.Ys 2009-10 and 2010-11.

9. In both the appeals of assessee in ITA Nos. 367 & 368/Ran/2016 for the A.Ys 2009-10 & 2010-11, common and identical issues are involved. Therefore, we take the assessee's appeal in ITA No. 367/Ran/2016 for the A.Y 2009-10 as the lead case.

10. The grounds of appeal raised by the assessee in ITA No. 367/Ran/2016 for the A.Y 2009-10 are as follows:-

ITA No. 367/Ran/2016 for the A.Y 2009-10 :

1. For that Ld. CIT(A) was not justified in confirming an addition of Rs.31,50,000/- made u/s 40A(3) on the basis of account obtained from the manufacture of "Pataka" at Shivkashi. No regular of Books of Accounts were maintained by the appellant. Appellant purchased Pataka at Bokaro Steel City from the Agents of the Manufacturers selling the products only on cash basis not having bank account in Bokaro. The amount collected was remitted by them to the manufacturers.

2. For that the appellant filed the Return of Income by estimating profit from retail business at around 5% of the turnover estimated or found by the department in course of survey proceedings. The profit disclosed on estimate was accepted. However, Ld. A.O. made addition for the alleged cash payment as found in the Books of the manufacturers.

3. For that Ld. CIT(A) was not justified in brushing aside number of decisions submitted to suggest that payment made for purchase of "pataka" by the appellant to the agent of the manufacturer in cash, cannot be disallowed u/s 40A(3). Appellant had not maintained regular Books of Accounts. Further, income of the appellant was estimated. Since appellant had not maintained accounts, they were

not audited. The addition made; therefore, is unjustified, illegal and incorrect.

4. For that interest u/s 234A and 234B can only be charged on the returned income and not on the assessed income following the decision of Hon'ble Jharkhand High Court.

5. For that other grounds in detail will be argued at the time of hearing.

11. Brief facts qua the issue are that the Assessing Officer in the course of scrutiny assessment u/s 143(3) read with section 263 observed. that the appellant purchased fire works, the business in which the appellant deals in, from Sri Kaliswari Fire Works, Sri Kaliswari Fire' Works (P) Ltd. and M/s. Graham Cap Works and made payments on various dates violating the provision of section 40A(3) as each payment exceeded in a day Rs.20,000/-. The total of such payment was worked out to Rs.28,10,000/- by the Assessing Officer. The Assessing Officer gave opportunity to the appellant to clarify/explain why the provision of section 40A(3) was violated in the aforesaid purchases. In response the appellant stated that (a) he did 'not maintain any books of account during the previous year, (b) that the appellant's income was estimated at 8% of the total sales in the original assessment u/s 143(3)/147 of the I.T. Act, and (c) that the payments were made through agents. The Assessing Officer gave a finding that the case was not a case covered u/s44AF of the I.T. Act in so far as the turnover of the appellant's business exceeds Rs. 40,00,0000/- in the previous year. Hence, the appellant was required to get the accounts audited u/s44AB of the I.T. Act which the appellant failed to comply. As regards the appellant's contention that the purchases were made through the agents, the Assessing Officer called for the details of names and addresses of the agents and details of commission paid to them along with evidences of cash payment to agents, and further whether the agents were appointed by parties from whom purchases were

made during the year under consideration. In response, appellant failed to furnish names and addresses of the agents. The appellant also failed to furnish the evidences to prove that the cash payments were made to the supplier company through agents. The Assessing Officer gave a further finding that the appellant has not debited any sums towards commission payment to the agents in the profit & loss account. The Assessing Officer also gave a finding that the appellant had not raised this issue of agent being the mediator between the appellant and the suppliers in the course of proceedings u/s 263 of the I.T. Act. This being so, the Assessing Officer has held that the idea of transacting through the agent is an afterthought devised by the appellant to defend its violation of section 40A(3) of the I.T. Act. Therefore, AO made addition of Rs.28,10,000/- u/s. 40A(3) of the Act.

12. On appeal, Id. CIT(A) confirmed the addition made by assessing officer.

13. Aggrieved the assessee is in appeal before us.

14. We have heard both the parties and perused the record. We note that since the assessee is involved in the business of 'pataka', which involves cash transaction. Pataka is normally sold and purchased on the occasions of 'Dewali Festival' and 'pataka' is a retail item. Therefore, the purchaser does not issue cheque(s) while purchasing the 'pataka' from fireworks. The assessee received cash from sale of *pataka*. The cash so received by the assessee in turn given to the purchaser from whom he purchased the pataka. Therefore, considering the nature of the business and the type of persons involved in the pataka business, it is difficult to route this transaction through banking channels. Moreover, the *pataka* business is kind of seasonal business. More *patakas* are used in Dussehra & Dewali festival and to purchase raw material and to sale the *pataka* to the end user, normally cash transactions are involved. Therefore, it is necessity of the business to do transaction in cash. Hence, provisions of section 40A(3) of the Act is not attracted to the

business activities of the assessee. We also note that when profit is estimated by AO, by rejecting books of accounts of the assessee, in that situation addition u/s. 40A(3) is not sustained. It is open to the assessee to furnish to the satisfaction of the AO, the circumstances under which the payment in the manner prescribed in section 40A(3) was not practicable or would have caused genuine difficulty to payee. It is also open to the assessee to identify the person who received the cash payment. Therefore, considering the nature of business “Pataka” and kind of persons involved in this business, that is retail traders, the cash payment was necessary. Hence, assessee has not violated the provisions of section 40A(3) of the Act. For that, we rely on the Judgment of Hon’ble Supreme Court in the case of Attar Singh Gurmukh Singh 191 ITR 667(SC). We note that where books of accounts are rejected and profit has been estimated, it is deemed that all the expenses and disallowances have been considered, Hence, no further disallowance u/s. 40A(3) is permissible. Hence, we allow all the grounds raised by the assessee. Hence, we delete both the additions made by the AO for the A.Ys under consideration. Grounds raised by the assessee in both the appeals (ITA Nos. 367 & 368/Ran/2016 for the A.Ys 2009-10 & 2010-11 are allowed.

15. In the result, all the appeals filed by the assessee are allowed.

Order Pronounced in the Open Court on 05-04-2019

Sd/-
(S. S. Godara)
Judicial Member

Sd/-
(Dr. A.L.Saini)
Accountant Member

Dated: 05 -04-2019

