

IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE

BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.381/Bang/2018

Assessment year : 2009-10

Shri K.C Purushothama, Civil Contractor, Yadava Beedhi, Holalkere. PAN – AHSP 2648 G	Vs.	The Income-tax Officer, Ward-1, Chitradurga.
APPELLANT		RESPONDENT

Appellant by	:	Shri Ramasubramanyam, C.A
Respondent by	:	Shri R.N Siddappaji, Addl. CIT (DR)

Date of hearing	:	11.07.2019
Date of Pronouncement	:	12.07.2019

ORDER

Per B.R Baskaran, Accountant Member

The appeal filed by the assessee is directed against the order dated 13/8/2017 passed by Id CIT(A), Davengere and it relates to asst. year 2009-10.

2. The assessee is aggrieved by the decision of Id CIT(A) in confirming the disallowance made u/s 40A(3) of the Act.

3. We heard the parties and perused the record. The assessee is a contractor. During the course of asst. proceedings, the AO noticed that the assessee has made payments by way of cash to various trade creditors to the tune of Rs.17.52 lakhs. The AO asked

the assessee to explain as to why the above said transactions will not attract provisions of sec.40A(3) of the Act. Since there was no response to various notices issued, the AO disallowed Rs.17.52 lakhs u/s 40A(3) of the Act.

4. Before the ld CIT(A), the assessee furnished affidavits obtained from persons to contend that the provisions of sec.40A(3) are not attracted. The ld CIT(A) was of the view that the averment made in the Affidavits were contradictory to the position taken in the grounds of appeal and accordingly confirmed the disallowance.

5. The ld AR appearing for the assessee submitted that there is no such contradiction, as pointed out by Ld CIT(A) . The ld AR submitted that the assessee is a civil contractor and is constrained to make payments by way of cash to workers. The payments were withdrawn by supervisors for making payments to labourers and the amount so paid to each of them was less than the limits prescribed u/s 40A(3) of the Act. The assessee has obtained affidavits in support of the above said explanations. He submitted that these facts have not been verified by the tax authorities and accordingly prayed that the matter may be restored to the file of the AO for examining it afresh.

6. On the contrary, the ld DR submitted that the assessee did not cooperate with the AO and hence, the AO was constrained to pass the asst. order to the best of his judgment u/s 144 of the Act. The Affidavits filed before the ld CIT(A) was found to be

contradictory to the grounds of appeal. Accordingly he submitted that the order passed by Id CIT(A) does not call for any interference.

6. Having heard the rival submissions, in the interest of natural justice, we are of the view that the assessee may be provided with one more opportunity to substantiate its claim. Accordingly we set aside the order passed by Id CIT(A) and restore this issue to the file of the AO for examining it afresh by duly considering the information/ explanations that may be furnished by the assessee. We also direct the assessee to cooperate with the AO for expeditious completion of the assessment. After affording adequate opportunity of being heard to the assessee, the AO may take appropriate decision in accordance with the law.

7. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the Open Court on **12th July, 2019.**

Sd/-
(Beena Pillai)
Judicial Member
Bangalore,
Dated, 12th July, 2019.

Sd/-
(B.R Baskaran)
Accountant Member

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
9. Date on which order goes for Xerox & endorsement.....
10. Date on which the file goes to the Head Clerk
11. The date on which the file goes to the Assistant Registrar for signature on the order
12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
13. Date of Despatch of Order.