

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

ITA No.3217/Bang/2018
Assessment year : 2014-15

The Income Tax Officer, Ward-6(2)(4), Bangalore.	Vs.	Smt. Chandra Moolchand Jain, No.1101, II Floor, Triveni Road, Yeshwantpur, Bangalore-560 022. PAN – ACYPJ 2331 B
APPELLANT		RESPONDENT

Appellant by	:	Dr. P.V Pradeep Kumar, Addl. CIT (DR)
Respondent by	:	Shri R.K Singhvi, C.A

Date of hearing	:	22.08.2019
Date of Pronouncement	:	28.08.2019

ORDER

Per N.V Vasudevan, Vice President :

This is an appeal by the Revenue against the order dated 27/9/2018 of CIT(A)-13 Bangalore relating to asst. year 2014-15.

2. The grounds of appeal raised by the Revenue reads as follows:-

“1. The order of the CIT (Appeals) is opposed to law and the facts and circumstances of the case.

2. On the facts and circumstances of the case, whether the Ld CIT(A) is justified in deleting the disallowance of Rs. 2,10,74,291/- made by the Assessing Officer u/s 40A(3) of the Act?

3. On the facts and circumstances of the case, whether the Ld CIT(A) is justified in holding that the clause (k) of Rule 6DD is applicable in the case of assessee?

4. For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the CIT(A), in so far as it relates to the above grounds may be reversed and that of the Assessing Officer be restored.

5. The appellant craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of the appeal.”

3. The assessee is a an individual and is a wholesale dealer in gold and silver bullion. The assessee filed her return of income for the Asst. Year 2014-15 on 08.01.2015 declaring a total income of Rs.4,40,250/-. During the Course of the Assessment proceedings, the AO proposed to the assessee that the amount paid for purchases in excess of Rs.20,000/- will be disallowed u/s 40A(3) of the Act. The assessee submitted that

a. She has commenced her business new and to get credibility, she had to make payments in Cash.

b. The Business in Gold was mostly after the Banking hours and hence, payments had to be made in Cash.

c. The Sellers had given Discount for Cash payments, which can be seen from the difference in rates between actual rate and the rate at which she had made purchases.

d. The persons to whom such payments are made are all identifiable and the Source of payments are duly recorded in the books of account.

4. The Assessing Officer however did not accept the plea of the assessee and by his order 19.12.2016 disallowed a sum of Rs.2,10,75,191/- which was cash payments in excess of Rs.20,000/- under Section 40A(3) of the Act. According to the AO, the Assessee has not proved that the transactions took place after banking hours and that the case of the assessee is not covered under any of the circumstances mentioned in Rule 6DD of the I T Rule, 1962.

5. Before CIT(A), the assessee submitted that the assessee had started the business of bullion, in the assessment year 2014-15 and that the assessee was new to this business and had no contacts in the market. The Assessee submitted that it is a practice in Gold/silver bullion business that the sale/purchases are made in cash as the market is volatile. Since the assessee was new entrant in this line of business, she had not contacts in the market. She was not able to purchase the Gold / Silver in the market against cheque/DD/RTGS. That the prices of Gold, & Silver bullion are controlled by international market, which open by 11.30 A.M. and closes by midnight. Because of the volatile nature of the market, the Assessee had to confirm the prices and quantity only by giving cash and that most of purchases are made from the people/dealers, who has reputation and quality & quantity. So the guarantee could be taken for the purchase of Gold/Silver. The Assessee submitted that cash purchase are made within the purview of sec. 40A(3) and the said section ought not to have been invoked in the case of assessee.

6. The assessee also placed reliance on certain judicial pronouncements: and in particular the decision of the ITAT Bangalore Bench in the case of Shri Venkatesh Kabade Vs. DCIT in ITA No.313/Bang/2012 order dated 30/5/2012. The assessee filed the following additional evidences before the CIT(A).

1. Cash Book for verification
2. Reasons for rate variation
3. Sales register which contained party's TIN numbers
4. VAT returns which confirms the Turnover declared to the Commercial tax department.
5. Bank statement.

7. The CIT(A) on a consideration of the submissions of the Assessee and other details, deleted the addition made by the AO by observing as follows:-

"I have examined the facts of the case. I have gone through the Assessment Order. In the Assessment Order, the AO has categorically recorded the submissions made by the assessee at para 4.5 and 6. However, it is stated in the Assessment order that Assessee did not furnish any documentary proof that the transactions were done after banking hours. This view of the Assessing Officer appears to far from reality. Except in Supermarkets and Big malls which are utilizing billing machines, the time of sale is not evident from the Bill. So, the appellant stated her inability to furnish the time of transactions, being new into the bullion business.

There is no conclusion drawn by the AO that

- i. There is a Suppression of turn over*
- ii. There is inflation of purchases.*
- iii. The parties to whom payments are made are not identifiable or non existent*

- iv. There are in fact no real purchases at all*
- v. There is an attempt to use the unaccounted money or black money.*

In the absence of the above factors, I am of the considered opinion that the case of the assessee is covered by the decision of Hon'ble ITAT in the case of Shri Venkaetsh Kabade Vs. DCIT in ITA No.313/Bang/2012 dated 30.5.2012, which was confirmed by the Hon'ble Karnataka High Court in 223 Tax.mann 116.

8. Apart from the above observations, the CIT(A) also made reference to the decision of the Jaipur Bench of ITAT in the case of A. Daga Royal Arts Vs. ITO (2018) 94 Taxmann.com 401 (Jaipur - Trib.). The aforesaid decision was rendered in the context of erstwhile Rule 6DD(j) of the ITAT Rules 1963 which did not exist for AY 2014-15, which is the AY involved in this appeal. Following the same, the CIT(A) deleted the addition made by the AO.

10. Aggrieved by the aforesaid order of the CIT(A), the Revenue has preferred the present appeal before the Tribunal.

11. At the time of hearing it was agreed by the parties that the additional evidence based on which the CIT(A) came to the conclusion that were exceptional circumstances for making payment in cash in violation of Sec.40A(3) of the Act were based on the additional evidence filed by the Assessee before CIT(A). It is admitted by the parties before us that the additional evidence relied upon by the CIT(A) was not confronted to the AO and the remand report obtained in terms of 46A of the Rules. The parties agreed that the matter should be resorted to the file of the AO for

denovo consideration in the light of the additional evidences filed by the Assessee before the CIT(A).

12. We have considered the submission of the parties and are of the view that the order of the CIT(A) should be set aside and the issue of disallowance u/s 40A(3) of the Act has to be remanded to the AO for consideration afresh in the light of the additional evidence filed by the assessee before the CIT(A). We also find that the findings of the CIT(A) on which specific rule of Rule 6DD under which the cash payment in question contrary to Sec.40A(3) could be permitted is not clear. In the circumstances, we are unable to comment or giving finding with regard to the correctness of the conclusions of the CIT(A).

13. We are therefore of the view that the matter should be remanded to the CIT(A) for consideration afresh. The CIT(A) will examine the claim of the assessee for non applicability of sec. 40A(3) of the Act in the light of the provisions of Rule 6DD of the Rules. The AO will afford an opportunity of being heard to the assessee before deciding the issue.

14. In the result, the appeal of the Revenue is treated as allowed for statistical purposes.

Pronounced in the open court on **28th August, 2019.**

Sd/-

Sd/-

(JASON P BOAZ)
Accountant Member
Bangalore
Dated, the 28th August, 2019../Vms/

(N.V. VASUDEVAN)
VICE PRESIDENT

Copy to:

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

By

Assistant Registrar, ITAT, Bangalore

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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
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