

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER**

	ITA No.651/Hyd/2019		
	Assessment Year: 2011-12		
	&		
	S.A. No. 147/Hyd/2019 (In ITA No.651/Hyd/2018) AY: 2011-12		
M/s. Badri Audisehaiah, 3/220, ZP High School Road, Gudur, Nellore District - 524101. PAN: AEUPB 5709 B	Vs.	Deputy Commissioner of Income Tax, Circle-1, Nellore.	
(Appellant)		(Respondent)	
Assessee by:	Sri B. Ramakrishna		
Revenue by:	Smt. Neeju Gupta, DR		
Date of hearing:	08/07/2019		
Date of pronouncement:	30/08/2019		

ORDER

PER A. MOHAN ALANKAMONY, AM.:

This appeal is filed by the assessee against the order of the Ld. CIT(A), Tirupati dated 30/03/2017 in Appeal No.315/2015-16/CIT(A)/TPT passed U/s. 143(3) & U/s. 250(6) of the Act for the assessment year 2011-12.

2. In this appeal the assessee has raised 7 grounds and the cruxes of the issues are follows: -

- (i) The Ld. CIT(A) erred in passing *ex-parte* order without providing sufficient opportunity to the assessee of being heard.
- (ii) The Ld. CIT(A) had erred in confirming the disallowance of expenditure by the Ld. A.O., aggregating to Rs. 46,94,939/- invoking the provisions of section 40A (3) of the Act towards cash payment exceeding Rs. 20,000/- with respect to: -

(a) Power and diesel purchases -	Rs. 20,28,942/-
(b) Feed purchases	- Rs. 6,66,065/-
(c) Chemical purchases	- Rs. 11,70,028/-
(d) Seed purchases	- Rs. 2,66,140/-
(e) Repairs and maintenance	- <u>Rs. 5,63,764/-</u>
Total	- <u>Rs. 46,94,939/-</u>

3. Brief facts of the case are that the assessee is an individual engaged in the business of Prawn culture files his e-return of income for the relevant assessment year on 12/12/2012 declaring his income as Rs. 14,57,090/-. Initially, the return was processed U/s. 143(1) of the Act and thereafter the case was taken up for scrutiny and assessment was completed U/s. 143(3) of the Act on 28.3.2014 wherein the Ld. AO made addition of Rs. 51,12,799/- invoking the provisions of section 40A(3) of the Act towards cash payment exceeding Rs. 20,000/- with respect to the expenditure incurred on (i) Feed purchases Rs. 1,56,97,890/-; (ii) Seed Purchase Rs. 45,26,000/-; (iii) Chemical purchase Rs. 14,91,030/-; (iv) Power and Diesel Rs. 26,97,800/-; (v)

Repairs and Maintenance Rs. 28,56,780/- and further disallowed the expenditure of Rs. 50,000/- by invoking the provisions of section 40(a)(ia) of the Act towards Professional Charges paid to M/s. Rajesh Associates without deducting Tax at Source.

4. On appeal, the Ld. CIT (A) gave partial relief to the assessee with respect to disallowance U/s. 40A(3) of the Act by applying Rule 6DD(e) of the IT Rules towards cash payments of Rs. 2,60,000/- and Rs. 1,58,860/- made to local farmers for purchase of seeds.

5. Before us the Ld. AR pleaded by stating that the Ld. Revenue Authorities had not properly verified the books of accounts of the assessee because predominantly the payments made towards the above-mentioned expenditures were not exceeding Rs. 20,000/- in any single day and further the purchases were made from various parties. It was further pleaded that the nature of business of the assessee was such that instant purchases had to be made and further the Aqua Culture farm of the assessee was located in a remote area where banking facilities were not available. The Ld. AR further argued stating that the assessee had declared substantial profit and had paid tax duly. Hence it was pleaded that the disallowance made by the Ld. Revenue Authorities invoking the provisions of section 40A(3) of the Act may be deleted otherwise great injustice would be inflicted on the assessee

leading to closure of his business. The Ld. DR on the other hand vehemently argued in support of the orders of the Ld. Revenue Authorities and requested to confirm the same.

6. We have heard the rival submissions and carefully perused the materials on record. On examining the statement of affairs of the assessee, we find that the assessee has declared gross profit of 23% (Rs. 74,47,018.30 X 100 / Rs. 3,25,09,738.30). Further, it is obvious that the nature of activities conducted by the assessee requires cash purchases since the Aqua-Culture site of the assessee is located in remote area with bare minimum facilities. In this situation, considering the nature of business of the assessee, we are of the view that the relief provided under Rule 6DD(e) of the IT Rules will be applicable in the case of the assessee. The Ld. CIT (A) has also recognized the same to a certain extent and had granted part relief to the assessee. Further, on examining the Profit & Loss declared by the assessee it is obvious that the assessee has declared substantial profit and paid tax accordingly. Keeping in view of the above facts and circumstances of the case, we are of the considered view that it is not appropriate on the part of the Revenue to invoke the provisions of section 40A(3) of the Act in the case of the assessee. Therefore, we hereby direct the Ld. AO to delete the disallowance made U/s. 40A(3) of the Act in the case of the assessee. As far as the ground No.1 raised by the assessee is concerned, we do

not find any merit because the assessee was provided with sufficient opportunities of being heard by the Ld.CIT(A) and hence the same is dismissed.

7. Since we have disposed of the appeal of the assessee, the Stay Application filed by the assessee does not survive.

8. In the result, the appeal of the assessee is partly allowed and the Stay Application of the assessee is dismissed.

Pronounced in the open Court on 30th August, 2019.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 30th August, 2019

OKK

Copy to:-

- 1) M/s. Badri Audisehaiah, 3/220, ZP High School Road, Gudur, Nellore District – 524101.
- 2) Deputy Commissioner of Income Tax, Circle-1, Nellore.
- 3) The CIT(A), Tirupati.
- 4) The Pr. CIT, Tirupati.
- 5) The DR, ITAT, Hyderabad
- 6) Guard File