

आयकर अपीलीय अधीकरण, न्यायपीठ – “C” कोलकाता,  
*IN THE INCOME TAX APPELLATE TRIBUNAL*  
*KOLKATA BENCH “C” KOLKATA*

Before **Shri J.Sudhakar Reddy, Accountant Member** and  
**Shri S.S.Godara, Judicial Member**

**ITA No.1776/Kol/2013**  
Assessment Year: 2009-10

Md. Salahuddin Mullick 52/B Taltala Lane, Kolkata-700 016 [PAN No.AFUPM 5018 D]	बनाम / V/s.	Income Tax Officer Ward-32(2), 10B, Middleton Row, 2 <sup>nd</sup> Floor, Kolkata-700 071
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Gopal Ram Sharma, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri Sankar Halder, JCIT-ST-DR
सुनवाई की तारीख/Date of Hearing	21-06-2019
घोषणा की तारीख/Date of Pronouncement	13-09-2019

**आदेश /O R D E R**

PER S.S.Godara, Judicial Member:-

This assessee's appeal for assessment year 2009-10 arises against the Commissioner of Income Tax (Appeals)-XIX, Kolkata's order dated 15.02.2013 passed in case No.216/CIT(A)-XIX/Wd-32(2),Kol/11-12, involving proceedings 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file(s) perused.

2. The assessee's former three grounds raised in instant appeal challenge correctness of both the lower authorities' action disallowing his cash payments of ₹1,51,51,700/- u/s 40A(3) of the Act. There is no dispute that this assessee has been purchasing waste papers in the name of his proprietorship concern M/s S.M.

Enterprise. It is also an admitted fact that he purchased waste paper not only from his surrounding suppliers but also from the nook and corner of Kolkata and Howrah districts as per the Assessing Officer it clear in assessment order dated 30.12.2011. The Assessing Officer has observed that the assessee's waste paper supplies come from per away places like Asansol, Burdwan and Midnapore districts of West Bengal as well.

3. Case file suggests that the assessee had made his waste paper purchases by way of bearer cheques to his vendors in his employees' names. Suffice to say, both the lower authorities have invoked sec. 40A(3) of the Act for disallowing the impugned cash payments over and above the threshold limit of ₹20,000/- per payee in a day. They hold that the assessee could not satisfactorily explains the compelling circumstances between the impugned cash payments.

4. Learned departmental representative vehemently contends during the course of hearing that the Assessing Officer as well as CIT(A) have rightly disallowed the assessee's instant cash payments on account of his failure in explaining the business exigency in involved therein in the light of prescribed circumstances under Rule 6DD of the Income-tax Rules, 1962. We notice in this backdrop that hon'ble Gujarat high court in PCIT vs. Aziz Ahmed H Shaikh ITA Appeal No. 694 of 2017 dated 18.09.2017 holds that overwhelming genuine payments made for waste paper purchases to the vendors are often made in cash which do not attract u/s 40A(3) disallowance. The department's SLP No.6189 of 2018 in hon'ble apex court also stands declined on 09.03.2018. Couple with this, hon'ble jurisdictional high court's decision in ITA No.202/2008 CIT Vs. Crescent Export Syndicate in ITA No. 202 of 2008 dated 30.07.2008 holds that overwhelming genuine payments are nowhere sought to be disallowed under the rigor of the impugned provision. We therefore hold in the light of the foregoing factual and legal position that the impugned u/s 40A(3) of ₹1,51,51,700/- is not sustainable. The same stands deleted accordingly.

5.        The assessee's next grievance seeks to delete sec. 40(a)(ia) disallowance on the twin lorry hire charges of ₹20,34,800/- and ₹3 lac; on account of non-deduction of TDS thereupon. The CIT(A) has affirmed the Assessing Officer's action thereby treating the assessee's payments inviting TDS deduction u/s. 194C of the Act on works contracts. We find no merit in Revenue's stand in support of impugned disallowance since there is no material on record before us suggesting any oral or written agreements between assessee and his lorry operators or the latter had aware assumed any contractual liabilities. Hon'ble jurisdictional high court in *CIT vs. M/s STUMM India ITA No.127 of 2009* declines the department's grievance against the tribunal's order deleting identical disallowance on the very aspects. We therefore accept the assessee's instant second substantive grievance as well forming subject-matter for fourth and fifth grounds.

6.        Lastly comes the assessee's third substantive grievance challenging correctness of both the lower authorities action disallowing his undisclosed purchase addition of ₹3,60,148/- in the course of assessment as affirmed in the lower appellate discussion as under:-

*“Undisclosed purchase of Rs.3,60,148/-:-*

*C.*

*(i)The assessee has raised such addition as 5<sup>th</sup> ground of appeal. The AO in theism order mentioned that the as has shown purchase of Rs.4,53,13,750/- in the trading and P&L A/c. of the proprietorship concerned. from the details of purchases submitted by the assessee the AO observed that the assessee had made purchases of Rs.3,63,06,120/- from 75 different parties and Rs.93,12,840/- form the local parties which were purchased of his business place form different small parties. Therefore, the assessee has made total purchase of Rs.4,56,18,960/- (Rs.3,63,06,120/- + Rs.93,12,840/-) whereas he has disclosed purchase of Rs.4,53,13,750/-.*

*(ii) Regarding the discrepancy the assessee in his reply dated 15/12/2011 stated that the amount of Rs.4,53,13,750/-. Under the head purchases as shown in the trading account is correct. The amount of purchase form small parties and street hawkers is Rs.90,07,630/- instead of Rs.93,12,840/-. He has also requested not to consider the difference of Rs.3,05,210/- as undisclosed purchase and has requested for not adding it to his total income.*

*Not satisfied with assessee's explanation as the details maintained and produced by assessee was showing difference in purchase account of Rs.3,05,210/-, the AO has treated such purchase from undisclosed sources and*

*since such purchase was not accounted for the AO also added further 18% of Rs.3,05,210/- as gross profit earned on such unaccounted purchases supposedly sold out of books also. On this basis the total amount of Rs.3,60,148/- (Rs.3,05,210 + Rs.54,938/-) was added to the total income of the assessee treating it as income from undisclosed sources.*

*The A/R in his submission dated 10.01.2013 has made submission on this point in the following manner:-*

*'In this regard again we will say that as stated in the assessment order, the representative of the assessee has produced books of account of the assessee's proprietorship concern and the Ld. AO has duly examined & test checked the same. Had there being any discrepancy he must have verified it from the Books of account produced before him itself because these are the documents on which basis details are being prepared.*

*In case any difference is found between the two statements, then it is the responsibility of the person relying upon those documents to verify the same before reaching to any conclusion, whether it is actually due to typing mistake or there is in fact concealment of facts. To err is the nature of human being. There are so many judicial announcement I which case laws.*

*Based on the aforesaid facts and on the circumstances of the case it is submitted that the action of the AO of addition of difference of figures amounting to Rs.3,05,160/- & deemed profit on such undisclosed purchase amounting to Rs.54,938/- is bad in law, Authorities Below initio void and illegal & should be deleted as such there is no difference between the two figures one as debited by the assessee in the P&L Account of his proprietorship concern, other being the total figure as per details submitted by his representative.'*

*(iii) On careful consideration of A/R submission and Assessing Officer's finding it s a fact that the appellant is unable to substantiate the inflated purchase of Rs.3,05,210/- and consequential benefit is already availed by the appellant in the books of account. It was the primary onus of the appellant to have explained such differences with the help of evidences or to have accepted voluntarily and included it as part of his income. The appellant has furnished different explanation at different point of time. The explanation given before the AO is different than what is stayed during the appeal proceedings. In this regard in the 5<sup>th</sup> grounds of appeal such difference of rs.3,05,210/- has been explained as forming part of closing stock. However all these explanations are unsubstantiated. In the background o this the decision arrived at by the AO of adding Rs.3,60,148/- (Rs.3,05,210 + Rs.54,938/-)is on proper ground and therefore, such addition is upheld on merit."*

Learned counsel's case during the course of hearing is that the assessee has sufficiently explained the impugned difference as per the corresponding details in the

profit and loss account as well as ledger account of the concerned suppliers. We see no merit in the assessee's arguments since the impugned differential figures of the closing stock have remained unexplained throughout. We thus affirm the lower authorities action to this effect. This last substantive ground is rejected.

7. This assessee's appeal is partly allowed in foregoing terms.

Order pronounced in open court on     /09/2019

Sd/-  
(लेखा सदस्य)  
(J.Sudhakar Reddy)  
Accountant Member

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

\*Dkp-Sr.PS

दिनांक:- 13/09/2019 कोलकाता / Kolkata

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-Md. Salahuddin Mullick 52/B, Taltala Lane, Kolakta-16
2. प्रत्यर्थी/Respondent-ITO Ward-32(2), 10B, Middleton Row, 2<sup>nd</sup> Floor, Kolkata-71
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता/DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
कोलकाता ।