

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH : CHENNAI

श्री इंटूरी रामा राव, लेखा सदस्य एवं
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
[BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER]

आयकर अपील सं./I.T.A. No.366/CHNY/2016.
निर्धारण वर्ष /Assessment year : 2011-2012

M/s. Sri Janarthana Spinning Mills,
187-1, KNP Road,
Karamadai,
Coimbatore 641 104. **Vs.** The Assistant Commissioner of
Income Tax,
Salary Circle 1,
Coimbatore

[PAN AAMFS 4005M]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. N. Arjun Raj, C.A. for
S. Sridhar, Advocate
प्रत्यर्थी की ओर से /Respondent by : Ms. Vidya Ramachandan, Addl. CIT.

सुनवाई की तारीख/Date of Hearing : 09-10-2019
घोषणा की तारीख /Date of Pronouncement : 21-10-2019

आदेश / ORDER

PER INTURI RAMA RAO, ACCOUNTANT MEMBER

This is an appeal filed by the Assessee directed against the order of the Commissioner of Income Tax (Appeals)-3, Coimbatore ('CIT(A)' for short) dated 16.11.2015 for the Assessment Year (AY) 2011-2012.

2. The brief facts of the case are as under:

The appellant namely Sri Janarthana Spinning Mills is a Partnership firm constituted under the Partnership Act. It is engaged in the business of spinning cotton. The return of income for the AY 2011-12 was filed on 26.09.2011 disclosing total income of Rs. 1,67,89,015/-. Against the said return of income, the assessment was completed by the Assistant Commissioner of Income Tax, Salary Circle I, Coimbatore (hereinafter called "AO") vide order dated 26.03.2014 passed u/s. 143(3) of the Income Tax Act, 1961 (in short 'the Act') at total income of Rs. 2,28,32,255/-. While doing so, the AO made the following additions:-

a)	Disallowance of Depreciation on windmill	:	2,03,87,136/-
b)	Disallowance of purchase expenses u/s.40A(3)	:	28,17,587/-
c)	Disallowance of Commission given to M/s, Balakrishnan Minor HUF u/s.40A(2)(b)	:	2,00,000/-

3. Being aggrieved, an appeal was preferred before Id. CIT(A), who vide impugned order partly allowed the appeal by deleting the addition on account of disallowance of depreciation on windmill and confirmed the additions made by the Assessing Officer u/s.40A(3) of

the Act of ₹28,17,587/- and disallowance of commission of ₹2,00,000/- paid to Balakrishnan Minor HUF.

4. Being aggrieved by that part of the order of the Id. CIT(A), the appellant is in appeal before us in the present appeal.

5. Ground No.2 relates to disallowance of purchase expenses of ₹28,17,587/- made u/s.40A(3) of the Act. During the assessment proceedings, the Assessing Officer on verification of the ledger account of the assessee found that the following payments were made by the partners of the assessee firm directly to the parties by otherwise than account payee cheque or payee bank draft.

Sl. No.	Name of Creditor/ Supplier	Nature of Transaction	Mode of payment	Bills or credit raised by the creditor	Payment made
1	M/s.Sai Corporation. Cotton	Cotton supplier	Paid by partner Smt. Jayamani directly to parties	390150	390150
2	M/s. Saradevi Enterprises Cotton	Cotton supplier	--do--	455098	455098
3	M/s. Venkataramana Traders	Cotton supplier	Paid by the partner V. Balakrishnan to the party	381430	381430
4	M/s. Jagadamba Traders	Cotton supplier	Paid by the partner	584605	584605

			Smt. Rampriya to the party		
5	M/s. Soundarya Cotton Industries		Paid to the partner V. Balakrishnan to the party	617301	617301
6	M/s.Vijayalakshmi traders	Cotton supplier	Paid by the partner Smt. Rampriya to the party	389003	389003

Therefore, the Assessing Officer disallowed the same under the provisions of Section 40A(3) of the Act. Even before the Id. CIT(A), it is submitted that trade credit balance of the parties from whom purchases were made were transferred to partners account who in turn made payments to the parties. Thus, it was submitted that there is no violation of Section 40A(3) of the Act, in as much as, the firm had not made any payments in cash to the parties. However, the Id. CIT(A) has rejected the above arguments and accordingly confirmed the addition. Even before us, it is submitted that the provisions of Section 40A(3) of the Act cannot be applied to the facts of the present case, as assessee firm had not made any cash payments directly to the parties. It is further submitted that it was not possible for the

assessee to sort out the disputes with the parties, hence the partners had taken up the responsibility of resolving the disputes. Ld. Authorised Representative also submitted that book adjustment was not made with the intention of overcoming the provisions of Section 40A(3) of the Act. Ld. Authorised Representative further submitted that in term of provisions of Section 40A(3) of the Act, if the payments are made otherwise than modes prescribed u/s.40A(3) of the Act then payments should be deemed to be income of the assessee of the previous year in which the cash payments are made. In the instant case, the payments were made to the suppliers by the partners of the assessee in the subsequent years and therefore the question of addition for the year under consideration does not arise.

6. On the other hand, Id. Senior Departmental Representative submitted that provisions of Section 40A(3) of the Act are squarely attracted and the lower authorities had rightly made the addition.

7. We heard the rival submissions and perused the material on record. The only issue in the present grounds of appeal relates to the disallowance under the provisions of Section 40A(3) of the Act. Undisputedly, the payments for purchases are made in cash to the tune of ₹28,17,587/-. It is the contention of the assessee that

provisions of Section 40A(3) of the Act have no application in as much as, the credit balance of the parties were transferred to the partners account and partners in turn settled the claims of the parties in cash. Since assessee firm has not paid cash, the provisions of Section 40A(3) of the Act have no application. We are afraid this submission of the assessee cannot be accepted for the reasons that undisputedly, the payees had received money in cash and thereby defeating the very purpose of enacting the provisions of Section 40A(3) of the Act. The Hon'ble Supreme Court in the case of *Attar Singh Gurmukh Singh vs. ITO, 191 ITR 667* wherein it was decided that when there is direct payment to the payees in cash, the provisions of Section 40A(3) of the Act are attracted. Relevant para of the judgment is abstracted below:-

'Originally, section 40A(3) required payments in respect of expenditure, which exceeded Rs. 2,500 to be made by a crossed cheque or a crossed bank draft. On failure to do so, the payments made were disallowed in the computation of income. In order to remove hardship to smaller assesseees, the Amending Act, 1987, has raised this ceiling to Rs. 10,000. Section 40A(3) begins with a non-obstante clause. It is an overriding provision which operates in spite of anything to the contrary contained in any other provision of the Act relating to the computation of income under the head "Profits and gains of business or profession". The Legislature has thus made it clear that the provisions of section 40A will apply in supersession of other contrary provisions of the Act relating to the computation of income. Sub-section (3) empowers the assessing officer to disallow, as a deduction, any expenditure in respect of

which payment is made of any sum exceeding Rs. 10,000 otherwise than by a crossed cheque or crossed bank draft.

Rule 6DD of the Income-tax Rules, 1962, refers to cases and circumstances in which payment of a sum exceeding Rs. 10,000 may be made otherwise than by a crossed cheque or by a crossed bank draft. The rule so far as it is relevant reads:

"6DD. Cases and circumstances in which payment in a sum exceeding ten thousand rupees may be made otherwise than by, a crossed cheque drawn on a bank or by a crossed bank draft.-No disallowance under sub-section (3) of section 40A shall be made where any payment in a sum exceeding ten thousand rupees is made otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft in the cases and circumstances specified hereunder, namely: ...

(j) in any other case, where the assessee satisfies the Assessing Officer that the payment could not be made by a crossed cheque drawn on a bank or by a crossed bank draft-

(1) due to exceptional or unavoidable circumstances ; or

(2) because payment in the manner aforesaid was not practicable, or would have caused genuine difficulty to the payee, having regard to the nature of the transaction and the necessity for expeditious settlement thereof,

and also furnishes evidence to the satisfaction of the Assessing Officer as to the, genuineness of the payment and the identity of the payee."

As to the validity of section 40A(3), it was urged that, if the price of the purchased material is not allowed to be adjusted against the sale price of the material sold for want of proof of payment by a crossed cheque or a crossed bank draft, then the income-tax levied will not be on the income but it will be on an assumed income. It is said that the provision authorising levy of tax on an assumed income would be a restriction on the right to carry on business, besides being arbitrary.

In our opinion, there is little merit in this contention. Section 40A(3) must not be read in isolation or to the exclusion of rule 6DD. The section must be read along with

the rule. If read together, it will be clear that the provisions are not intended to restrict the business activities. There is no restriction on the assessee in his trading activities. Section 40A(3) only empowers the Assessing Officer to disallow the deduction claimed as expenditure in respect of which payment is not made by crossed cheque or crossed bank draft. The payment by crossed cheque or crossed bank draft is insisted on to enable the assessing authority to ascertain whether the payment was genuine or whether it was out of the income from undisclosed sources. The terms of section 40A(3) are not absolute. Considerations of business expediency and other relevant factors are not excluded. Genuine and bona fide transactions are not taken out of the sweep of the section. It is open to the assessee to furnish to the satisfaction of the Assessing Officer the circumstances under which the payment in the manner prescribed in section 40A(3) was not practicable or would have caused genuine difficulty to the payee. It is also open to the assessee to identify the person who has received the cash payment. Rule 6DD provides that an assessee can be exempted from the requirement of payment by a crossed cheque or crossed bank draft in the circumstances specified under the rule. It will be clear from the provisions of section 40A(3) and rule 6DD that they are intended to regulate business transactions and to prevent the use of unaccounted money or reduce the chances to use black money for business transactions. (Mudiam Oil Company v. ITO [1973] 92 ITR 519 (AP)). If the payment is made by a crossed cheque drawn on a bank or a crossed bank draft, then it will be easier to ascertain, when deduction is claimed, whether the payment was genuine and whether it was out of the income from disclosed sources. In interpreting a taxing statute, the court cannot be oblivious of the proliferation of black money which is under circulation in our country. Any restraint intended to curb the chances and opportunities to use or create black money should not be regarded as curtailing the freedom of trade or business”.

Furthermore, what is not directly permitted cannot be indirectly permitted. Therefore, we do not find any reason to interfere with the

orders of the lower authorities. Thus, ground of appeal No.2 filed by the assessee stands dismissed.

8. Ground No.3 relates to disallowance of commission paid to Balakrishnan Minor (HUF) u/s.40A(2) (b) of the Act for ₹2,00,000/-. The Assessing Officer disallowed the commission payment of ₹2,00,000/- paid to Balakrishnan Minor (HUF) under the provisions of Section 40A(2)(b) of the Act for two reasons, first there was no proof of rendering any services by the Balakrishnan Minor (HUF) and secondly the services stated to have been rendered only in individual capacity.

9. Even on appeal before the Id. CIT(A), the Id. CIT(A) confirmed the addition for want of evidence of services rendered.

10. Being aggrieved, the appellant is in appeal before us in the present appeal. The Id. Authorised Representative submitted that the Assessing Officer was not justified in making the addition without bringing on record what is the fair market value of the services rendered.

11. On the other hand, the Id. Sr. Departmental Representative placed reliance on the orders of lower authorities.

12. We heard the rival submissions and perused the material on record. It is settled position of law that commission payment cannot be allowed as deduction in the absences of any evidence on record establishing rendition of services. In this connection, reliance can be placed on the decision of Bangalore Bench of the Tribunal in the case of M/s. 3M India Ltd., vs. Asst. CIT, LTU, in IT(TP)A 725/Bang/2011 dated 13/05/2016, wherein it was held as follows:-

"The onus lies on the assessee to prove that the services are actually rendered by the AE. In this context, we may point out to the decision in the case of Hon'ble Supreme Court in the case of Laxmi Narayan Madanlal vs. CIT (86 ITR 439) wherein it was held as follows

The mere existence of an agreement between the assessee and its selling agents or payment of certain amounts as commission, assuming there was such payment, does not bind the Income-tax Officer to hold that the payment was made exclusively and wholly for the purpose of the assessee's business.

Thus, for allowability of this kind of expenditure, condition sine qua non is proof of actual services rendered. The co-ordinate bench of the Tribunal, to which one of us i.e. the Accountant Member is the author of the order, in the case of M/s.B Fouress Pvt. Ltd. vs. DCIT in ITA Nos.847 & 847/Bang/2014 dated 30/12/2015 held as follows:

.....Thus, the assessee failed to discharge the burden of proving that the expenditure laid out were incurred wholly and exclusively for the purpose of business. We may further add that the Hon'ble Supreme Court in the case of CIT Vs Imperial Chemical Industries (Ind.) Pvt. Ltd (1969) 74 ITR 17 has unequivocally held that the burden of proving that a particular expenditure had been aid out or incurred wholly and exclusively for the purpose of business entirely lies on the assessee. The discharge of the burden had to be effective and meaningful and not to cover up by merely book entries and paper work. The mere fact of payment of commission by account payee cheques and compliances with the TDS provisions shall not alone enable the assessee to claim deduction unless and amount has been expended wholly and exclusively for the purpose of business.

11. A Co-ordinate Bench Tribunal of Delhi in the case of *Kanu Kitchen Kulture (P)Ltd Vs DCIT (2013) 28 ITR (T) 49 (Del.-Trib.)* held that whether the assessee failed to demonstrate the services rendered by the commission agent, the commission was disallowed. The relevant paras of the judgment are reproduced below;

“22. Thus the assessee as utterly failed to demonstrate the nature and extent of service rendered by the agent and availed of by the assessee for its business of modular kitchen. In this scenario what appears on record is merely book entries coupled with TDS the amount which will be claimed as a refund by the recipient being a loss making concern. In our considered view the assessee has produced only skeletal paper work of the arrangement without any iota of evidence about actual business services rendered.

23. The assessee's claim for allowing similar commission payment in subsequent year carries no merit inasmuch as the learned DR has rightly pleaded that each and every year of assessment is separate and independent unit and principles of resjudicata do not apply. The assessment for the assessment year 2009-10 is under section 143(1) and for the assessment year 2010-11 there is no mention of the commission at all. Therefore, we are unable to give evidenced to the facts whose record is not before us and not referred to before the lower authorities”.

12. Similarly, the Hon'ble Delhi High Court in the case of *Schneider Electric (Ind.) Ltd Vs CIT (21008) 304 ITR 360 (Del.)* held that in the absence of material on record suggesting that the commission agents had procured the sale orders, no commission should be allowed. The relevant para of the judgment is reproduced below;

“13. We agree with the Tribunal that there is absolutely no material on record to suggest that M/s Ram Agencies had procured any sale orders for the assessee. The production of a few bills or payment having been made by account payee cheques cannot by itself show that M/s Ram Agencies had procured sale orders for the assessee. Apart from an internal note, there is no evidence of any correspondence or any personal; meetings etc. between the assessee and M/s

Ram Agencies to suggest that there was any relationship on the basis of which M/s Ram Agencies procured some orders for the assessee for which it was entitled to receive commission. Moreover, we find that the understanding between the parties was an oral understanding and it appears to be doubtful that such an oral understanding can be arrived at without any long standing relationship having been established between the assessee and M/s Ram Agencies. It seems a bit out of place that the parties entered into an oral business relationship involving such huge amounts of money over a period of time”.

13, The Co-ordinate Bench of Delhi in the case of Printer House Pvt.Ltd. Vs DCIT (Del.) authored by Accountant Member, after referring to the above precedence on this issue held as follows:

“Thus, having regard to the ratio laid down in the above cases that in the absence of proof in support of the services rendered by the commission agent, no commission can be allowed as a deduction. Therefore, we dismiss the appeal filed by the assessee and allow the appeals filed by the revenue”.

14. In the present case, the learned CIT(A) had not examined any evidence to show that the agents have actually rendered their services. The learned CIT(A) had totally misdirected himself by examining the issue from the angle of tax deducted at source and he had failed to examine whether the services are actually rendered by the commission agents or not. Therefore, we are unable to sustain the order of the learned CIT(A) and hold that the commission payments in question are not allowable keeping in view the ratio laid down in the cases cited supra. The assessee company had miserably failed to demonstrate the actual services rendered by the agents to whom the commission payments were made, despite ample opportunity granted by this Tribunal to furnish evidence in support of service rendered by commission agent”.

Even before us, no material is shown establishing rendition of actual services by Balakrishnan Minor (HUF) and therefore commission

payment cannot be allowed as deduction. Ground No.3 filed by the assessee is also stands dismissed.

13. In the result, the appeal of the assessee stands dismissed.

Order pronounced on 21st day of October, 2019, at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(इंटूरी रामा राव)

(INTURI RAMA RAO)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated:21st October, 2019.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- | | | |
|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |