

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD
BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER
(THROUGH VIRTUAL HEARING)

ITA No.626/Hyd/2018		
Assessment Year:2014-15		
Jagdishpershad and Company, Hyderabad. PAN: AABFJ 9854 G	Vs.	Assistant Commissioner of Income Tax, Circle-7(1), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Sri S. Rama Rao	
Revenue by:	Sri Nilanjan Dey, DR	
Date of hearing:	20/08/2020	
Date of pronouncement:	25/08/2020	

ORDER

PER A. MOHAN ALANKAMONY, AM.:

This appeal is filed by the assessee against the order of the Ld. CIT (A)-8, Hyderabad in ITA No. 10325/CIT(A)-8/Hyd/2017-18, dated 27/02/2018, passed U/s. 143(3) r.w.s 250(6) of the Act for the AY 2014-15.

2. The assessee has raised five grounds in his appeal and they are reproduced herein below for reference:-

1. *"The order of the Ld. CIT (A) is erroneous both on facts and in law.*
2. *The Ld. CIT (A) erred in confirming the addition of Rs. 7,81,443/- made by the Assessing Officer by applying the provisions U/s. 40A(2) of the IT Act.*

3. *The Ld. CIT (A) ought to have seen that both the appellant and the related party are the taxable entities and even the related parties paying taxes at the maximum.*
4. *The Ld. CIT (A) ought to have seen that the Assessing Officer did not bring on record any comparable case for applying the provisions U/s. 40A(2) of the IT Act and also did not bring any evidence to show that the transaction has the effect of revenue loss.*
5. *Any other ground or grounds that may be urged at the time of hearing.”*

3. The brief facts of the case are that the assessee is a firm engaged in the business as wholesale and retail trading of Dal. The assessee filed its return of income for the AY 2014-15 on 15/9/2014 declaring total income of Rs. 12,88,810/-. Initially the return was processed U/s. 143(1) of the Act and thereafter, the case was selected for scrutiny under CASS. Subsequently, the assessment was completed U/s. 143(3) of the Act vide order dated 26/12/2016 wherein the Ld. AO made addition of Rs. 7,81,443/- invoking the provisions of section 40A(2)(b) of the Act. During the course of scrutiny assessment proceedings, it was observed by the Ld. AO that the assessee had purchased different varieties of Dal from persons specified U/s. 40A(2)(b) of the Act. It was further observed that the assessee had paid relatively higher price for the purchase of Dal from the persons specified U/s. 40A(2)(b) of the Act and the same was worked out by the Ld.AO at Rs. 7,81,443/-. On appeal, the Ld. CIT (A) confirmed the addition made by the Ld. AO by agreeing with his view and aggrieved by the Order of Ld.CIT(A) the assessee is now on appeal before us.

4. At the outset, the Ld. AR submitted that the assessee as well as the persons specified U/s. 40A(2)(b) of the Act were all in the higher bracket of tax therefore, there is no loss to the Revenue even if it is opined that the assessee had paid a higher price for the purchases made from the persons specified U/s. 40A(2)(b) of the Act. The Ld.

AR further vehemently argued by stating that the purchases made by the assessee from the persons specified U/s. 40A(2)(b) of the Act were of the higher quality and therefore the meagre difference in price cannot be held against the assessee for invoking the provisions of section 40A(2)(b) of the Act. It was therefore pleaded that the addition made by the Ld. AO which was further confirmed by the Ld. CIT (A) may be deleted. The Ld. DR strongly opposed to the submission of the Ld. AR and requested for confirming the orders of the Ld. Revenue Authorities.

5. We have heard the rival submissions and carefully perused the materials available on record. From the materials and records produced before us, it is very difficult to comment and judge on the quality of the produce purchased by the assessee and decide whether the provisions of section 40A(2)(b) of the Act can be invoked on the assessee. However, since the Ld. AR has argued by stating that even if the provisions of section 40A(2)(b) of the Act is not invoked on the assessee there is no revenue loss because the assessee as well as the persons from whom the assessee has purchased the produce falls under the higher bracket of tax and if the assertion of the Ld. AR happens to be true, we are of the considered view that it will be an futile exercise to venture into the issue of invoking the provisions of section 40A(2)(b) of the Act and it will further lead to double taxation because the other entities would have been also taxed on the profit made on these transactions. Therefore, in the interest of justice, we hereby set-aside the order of the Ld. CIT (A) and remit the matter back to the file of Ld. AO in order to verify whether the entire transactions are revenue neutral and if found so, delete the addition made by invoking the provisions of section 40A(2)(b) of the Act

and if found otherwise pass appropriate order in accordance with law and merit after affording proper opportunity to the assessee of being heard. It is Ordered Accordingly.

6. In the result, appeal of the assessee is allowed for statistical purposes as indicated herein above.

Order Pronounced in the open Court on 25th August, 2020.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 25th August, 2020.

OKK

Copy to:-

1	Jagdishpershad and Company, H.No. 15-9358/14, Mukthyar Gunj, Hyderabad
2	Asst. Commissioner of Income Tax, Circle-7(1), Signature Towers, Kondapur, Hyderabad.
3	The CIT (A)-8, Hyderabad.
4	The Pr. Commissioner of Income Tax-3, Hyderabad.
5	The DR, ITAT, Hyderabad.
6	Guard file.