

आयकर अपीलिय अधीकरण, न्यायपीठ –“A” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
[Before Shri A. T. Varkey, JM and Dr. ArjunLalSaini, AM]

ITA No. 980/Kol/2019
Assessment Year: 2015-16

A.C.I.T, Circle-26(1), Kolkata	Vs.	Sri Ranjan Debnath PAN: ADTPD2374A
Appellant		Respondent

Date of Hearing (Virtual)	19.08.2020
Date of Pronouncement	09 .09.2020
For the Appellant	Shri Dhrubajyoti Ray, JCIT,CIT/DR
For the Respondent	Shri Miraj D. Shah, Ld.AR

ORDER

Shri A. T. Varkey, JM

This is an appeal preferred by the revenue against the order of Ld. CIT(A)-7, Kolkata dated 12-03-2019 for the assessment year 2015-16.

2. Ground no. 1 of revenue's appeal reads as under:-

01. Whether on the facts and in the circumstances of the case, the ld. CIT(A) erred in law as well as facts in deleting the addition of Rs.2,07,52,802/- made by the Assessing Officer for cash purchases by the assessee from M/s. The Supreme Industries Ltd in violation of the provisions of Section 40A(3) of the Act.

3. Facts of the issue are that the assessee is an individual, who is engaged in three business (i) trading in fish & fish food in the name of M/s. RanjanDebnath, (ii) trading of plastic crates in the name of M/s. Santoshimata Enterprises and (iii) running a petrol pump in the name of M/s. Kamal Service Station. The AO noted that the assessee in the name of M/s. Santoshimata Enterprise had made a purchase of Rs. 4,06,44,483/- from M/s. Supreme Industries, Kolkata and assessee had paid Rs. 2,07,52,802/- in cash on different dates. The AO reproduced the details of said cash payment of Rs. 2,07,52,802/- in his order at pages 2 to 4 from 01-04-2014 to 31-03-2015. According to the AO since there was violation of provisions of section 40A(3) of the Income-tax Act, 1961 (herein after referred to as the

‘Act’), he gave/issued notice to the assessee and after being not satisfied with the reply given by the assessee was pleased to disallow the said amount. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A), who was pleased to delete the same by relying on the decision of this Tribunal in the case of Sri Rampada vs. ITO, Haldia in ITA No. 67/Kol/2013 for the AY 2008-09 dated 07-10-2015. Aggrieved, the revenue is before us.

4. Shri Dhrubajyoti Ray, JCIT, Learned Departmental Representative (hereinafter referred to as the ‘Ld. DR’) vehemently assailing the impugned order of the Ld. CIT(A) contended that the Ld. CIT(A) has wrongly relied upon order of this Tribunal in the case of Sri Rampada (supra) since in that case the assessee was dealing with the business in poultry foods, which is admittedly an agriculture produce and not what the assessee was engaged in. According to the Ld. DR since in that case 6DD of the Income Tax Rules 1962 (in short, hereinafter the ‘Rules’) was attracted, the Tribunal gave relief to that assessee. According to the Ld. DR, the Ld. CIT(A) gave relief to the assessee by taking note that the genuineness of purchase, and the genuineness of payments in cash as well as the identity of the payee have not been disputed by the AO and therefore, after citing the case law of Sri Rampada (supra), he gave relief, which action is erroneous. It was also contended by him (Ld. DR) that there was no urgency for the assessee to have deposited the cash in the bank account. According to the Ld. AR, M/s. Supreme Industries is located in Kolkata and assessee could have given the payment by cheque/bank draft rather than giving by cash. According to the Ld. AR, a perusal of the page-3 of the assessment order would reveal that on 31-01-2015 an amount of Rs. 15 lakh was given in cash to M/s. Supreme Industries, which cannot be accepted. Therefore, according to the Ld. DR the impugned order of the Ld. CIT(A) need to be reversed.

5. Per contra, Shri Miraj D. Shah, Learned Authorised Representative (hereinafter referred to as the ‘Ld. AR’) contended that the assessee being individual engaged in the business of trading in fish & fish food as well as he trades plastic crates for packing/storing of fish. According to him, the modus-operandi adopted by the assessee is that he purchases the plastic crates from M/s. Supreme Industries located at Kolkata on credit and transported it to the rural areas situated in State of Andhra Pradesh, wherein the plastic crates are sold to the farmers, who are engaged in farming of aqua culture of fish in the village ponds. According to the Ld. AR, the plastic-crates sold to farmers are article used for storage of fish and the consideration assessee receives from the farmers are duly deposited directly in

to the bank account of M/s. Supreme Industries, which attracts exemption under rule 6DD. According to the Ld. AR, while the assessee goes to sell the plastic-crates, it also purchases fish from these farmers, which are packed and stored in the assessee's own plastic crates, which is thereafter transported from Andhra Pradesh to Kolkata for selling the fish. The Ld. AR explained that since the payments for the plastic crates were given in cash by the farmers, there was risk to transport the cash back to Kolkata from A.P and therefore, the assessee deposited cash in the bank account of M/s. Supreme Industries. Therefore, the AO himself in his order clearly noted that *"during the year, assessee has made the purchase from mainly – Supreme Industries. Against the aforesaid purchases, assessee has made the payment in cash by depositing money directly to the bank account of the aforesaid companies"*. Therefore, according to the Ld. AR the question of genuineness of the payment cannot be disbelieved and the AO himself has not doubted about the genuineness of such payment. It was pointed out by the Ld. AR that the Ld. CIT(A) therefore has also noted that *"the genuineness of purchase, genuineness of payments in cash as well as the identity of the payee have not been disputed by the AO in any manner"*. According to the Ld. AR, this finding of the Ld. CIT(A) has not been challenged by the revenue while preferring this appeal specifically in its grounds of appeal. Therefore, according to Ld AR, the said finding fact of the Ld. CIT(A) regarding genuineness of purchase/payments in cash as well as the identity of the payee got crystalized. Therefore, according to the Ld. AR, the Ld. CIT(A) has rightly relied upon the order of this Tribunal in the case of Sri Rampada (supra) and decided the issue in favour of the assessee, which does not require any interference by us. Alternatively, the Ld. AR also drew our attention to the decision of this Tribunal in assessee's own case for the AY 2013-14 in ITA No. 137/2Kol/2018 vide order dated 19-02-2020, and submitted that this was a case, wherein the Ld. Pr. CIT vide his order dated 26-03-2018 exercising his jurisdiction u/s. 263 of the Act had set aside the order of the AO and directed him to assess on this issue as under:-

"12. Under these circumstances, I am of the considered opinion that it is a fit case for invoking provisions u/s 263 of the I. T. Act. Thus, the case is being restored back to the file of A.O. u/s 263 on the issue of expenditure incurred in cash violating the provisions of Sec. 40A(3). While framing the assessment, the A.O. shall consider above mentioned Issues and conduct necessary enquiries and verifications in this regard. Needless to add that the AO shall provide a reasonable opportunity of being heard to the assessee before finalising the assessment."

6. Against the order dated 26-03-2018 passed u/s. 263 of the Act of the Ld. Pr. CIT the assessee (Shri Ranjan Debnath) preferred an appeal before this Tribunal seeking modification of the order of the Ld. Pr. CIT, wherein the Tribunal modified the order and directed the AO as under:-

“7. With the above discussion we modify the impugned order of Pr. CIT and direct the AO to follow the propositions of law laid down by the Tribunal in the case of Binod Kumar Burnwal (supra) and HaridasSom (supra) and not to disallow payments u/s. 40A(3) if the same are genuine.” (emphasis given by us)

7. Therefore, according to the Ld. AR since for the AY 2013-14 in assessee's own case, this was the very same issue before the Tribunal, wherein the Tribunal was pleased to direct the AO not to disallow payments made u/s. 40A(3) of the Act, if the same are genuine. He also relied upon the decisions of the Hon'ble Jurisdictional High Court in the case of CIT vs. CPL Tannery reported in (2009) 318 ITR 179 (Cal.) and CIT vs. Crescent Export Syndicate in ITA No. 202 of 2008 dated 30-07-2008 as well as other decisions cited therein that case. Therefore he does not want us to interfere with the order of Ld CIT(A).

8. Having heard both the parties, we note that the assessee is an individual, who is engaged in the business/trading of fish & fish food as well as sales of plastic crates as well as engaged in the business of running a petrol pump. We note that the AO found that the assessee has made payment in cash to the tune of Rs. 2.07 crores in its business of purchase of plastic crates to M/s.Supreme Industries. Therefore, he disallowed the expenditure claim of Rs.2,07,52,802/- made by the assessee u/s. 40A(3) of the Act for the reason that there was no business expediency. The Ld. CIT(A) noted that the genuineness of purchase, genuineness of payments in cash as well as the identity of the payee have not been disputed by the AO. Therefore, by relying on the decision of this Tribunal in the case of Sri Rampada (supra) the Ld. CIT(A) was pleased to delete the addition. We note that the assessee is into the business of trading of fish & fish food as well as he trades plastic crates to the farmers which are intended to store the fish for transporting it to various destinations including other areas situated in India. We note that assessee sold fish-food and plastic crates to the farmers, who are engaged in the business of aqua culture fish farming. The Ld. CIT(A) noted that the farmers to whom assessee sold the fish food and plastic crates are located/ situated in far flung villages/rural areas. We note that the farmers farmed fish in the ponds in rural far flung villages. The modus operandi of the business of the assessee is that

the assessee purchased plastic-crates on credit from M/s. Supreme Industries situated in Kolkata, which is one of the reputed & leading plastic manufacturer having more than Rs 100 crore business turnover. As noted the assessee purchased plastic crates on credit from M/s. Supreme Industries, Kolkata and for the purpose of selling it, transported it to the rural areas situated at far flung villages in the State of A.P and sold it as well as fish-food to the farmers and collected cash from them as well as buys fish also from them and then the fish bought by assessee are stored in the plastic crates and then transported back to Kolkata from State of AP for further trade in fish. Since the farmers purchased plastic crates for storage of fish & transportation to long destination, situated in other places of India. It is common knowledge that plastic-crates are desired/required for storage of fish because fish is perishable, so it has to be packed along with ice and when the temperature outside goes up ice melts and water start dripping, so to avoid that plastic-crates are used for storage and transporting. And the assessee collected cash from these farmers for sale of fish-food & plastic-crates, which the assessee deposited in the bank account of M/s. Supreme Industries. According to assessee there is risk of transporting of cash from State of Andhra Pradesh to Kolkata, so the assessee deposited the same in the nearest bank in the bank account of M/s. Supreme Industries. It was brought to our notice that this modus operandi the assessee has followed for the last so many years and the department had always accepted the transaction and never questioned the genuineness of the transaction and therefore, on this issue no disallowance was made in earlier years. However, according to the assessee, only in this year under consideration disallowance was made for the first time. And, thereafter, the Ld. Pr. CIT for the AY 2013-14 also interfered (vide order dated 26-03-2018) by exercising his revisional jurisdiction u/s. 263 of the Act (supra). We note that Tribunal in assessee's own case for the AY 2013-14 (supra) has modified the direction given by the Ld. Pr. CIT u/s. 263 of the Act to the AO and directed the AO not to disallow payments remitted to M/s. Supreme Industries u/s. 40A(3), if the same are genuine. We note that the Ld. CIT(A) has given a clear finding that the genuineness of purchase, and, the genuineness of payments in cash as well as the identity of the payee have not been disputed by the AO in any manner. This finding of fact has not been challenged by the revenue by raising specific ground of appeal before us. However, taking into consideration, our own order in assessee's case though emanating from order passed under section 263 of the Act by the Ld. Pr. CIT, we would like the AO to examine the genuineness of expenditure and, if the AO find that the

assessee made the deposits in the said bank account of M/s. Supreme Industries which practice the assessee has been consistently following for so many years and the department had consistently accepted the same, then no disallowance is warranted.

9. To sum up, in this case we have taken note that the assessee purchases fish from fishermen/farmers and in turn sells the articles for storage of fish (plastic crates), for which the payments are made in cash by the farmers/fishermen, which are promptly deposited by the assessee in the bank account of Sundry debtor, [M/s. Supreme Industries]. Since there is risk in carrying large quantity of cash from the rural areas of Andhra Pradesh to Kolkata while transporting back fish from State of A.P to Kolkata the assessee has consistently adopted this modus of remittance of payment to M/s. Supreme Industries. Since the genuineness of the modus operandi has not be disbelieved/doubted by the AO and the Id. CIT(A) has made a clear finding of genuineness of purchase/payments made in cash, which finding of fact has not been assailed and since the identity of the payee is not doubted and moreover, since the assessee is dealing with fish/fish food as well as for the purpose of storing the fish plastic crates are used/purchased and the Id. CIT(A) placed reliance on the order of this Tribunal in the case of Rampada (supra) there is no ground for interference as such. We also rely upon the decisions of the Hon'ble Jurisdictional High Court in the case of CIT vs. CPL Tannery reported in (2009) 318 ITR 179 (Cal.) and CIT vs. Crescent Export Syndicate in ITA No. 202 of 2008 dated 30-07-2008 as well as other decisions cited therein that case. Be that as it may be, taking note of the decision of this Tribunal in assessee's own case for AY 2013-14 (supra), we set aside the order of the Ld. CIT(A) and remand the impugned issue back to the AO with a direction that no disallowance of expenditure to be resorted to u/s. 40A(3) of the Act if the same are found to be genuine and paid to M/s. Supreme Industries. Needless to say proper opportunity of hearing is given to the assessee. The assessee is directed to be diligent before in the proceedings before the AO.

10. In the result, the appeal of revenue is allowed for statistical purpose.

Order is pronounced in the open court on 09 Sept. 2020.

Sd/-
(Arjun Lal Saini)
Accountant Member

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated : 09 Sept. 2020

**PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant –The ACIT, Cir-26(1), AaykarBhawan (Dakshin), 1stFl, Gariahat Road (S), Kolkata-68.
2. Respondent –Shri Ranjan Debnath 2 Bachhar Para Road, Thakurpukur, Kolkata-700 063.
3. CIT(A)-, Kolkata (sent through e-mail)
4. CIT- , Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mail)
By order,

/True Copy,

Assistant Registrar