

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No. 2051/PUN/2017

निर्धारण वर्ष / Assessment Year : 2014-15

Sanjay Shrirang Mhase,
Gokul Colony,
At & Post: Rahuri,
Dist. Ahmednagar.
PAN : AHWPM1694H

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,
Ahmednagar Circle, Ahmednagar.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Bharat H. Shah

Revenue by : Shri S.P Walimbe

सुनवाई की तारीख / Date of Hearing : 10.11.2020

घोषणा की तारीख / Date of Pronouncement : 12.11.2020

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 05.05.2017 passed by the Commissioner of Income Tax (Appeals)-2, Pune [‘CIT(A)'] for assessment year 2014-15.

2. **Ground No.1** raised by the assessee challenging the action of the CIT(A) in confirming the order of the Assessing Officer in disallowing the amount of Rs.56,36,188/- on account of payment made to third parties in the facts and circumstances of the case.

3. Heard both sides and perused the materials available on record. The facts emanating from records are that the assessee is an individual and engaged in the business of supplying water tankers to various locations as per the directions of the Government. The Assessing Officer found the amount to the extent of Rs.56,36,188/- has not actually paid to sub-contractors and were paid through journal vouchers in his books of accounts. The Assessing Officer doubted the sanctity of such payments and in his opinion the payment must be through cash/cheques. In order to verify the genuineness of such payments, the Assessing Officer asked the assessee to furnish evidences in support of genuineness of such payments and to show the same incurred wholly for the purpose of his business. The assessee contended that the sub-contractors has consented to give payments to third parties and the assessee made payment to such third parties on the instruction of sub-contractors through crossed cheques. The Assessing Officer again issued another show cause notice to produce copies of ledger account of contractors/sub-contractors/ beneficiaries in whose name payments were made from Bank of Maharashtra, loan account of Rahuri Branch. We note that the Assessing Officer observed that the assessee miserably failed to prove with concrete evidences the claim of payments made to third parties and added such amount to the total income of the assessee treating the payment as non genuine.

4. The CIT(A) confirmed the order of the Assessing Officer.

5. Before us, Shri Bharat H. Shah, the Ld. AR filed paper book containing 413 pages and submitted that the assessee is ready to substantiate the payments made to third parties by producing necessary evidences as sought by the Assessing Officer during the course of assessment proceedings. We note that as discussed above, the assessee could not produce any evidences regarding payments made to third parties on the instruction given by the sub-contractors of the assessee. But on perusal of the materials produced before us from Page No.14 to 413 of the paper book, it seems that the sub-contractors instructed the assessee to make payments to third parties on behalf of the sub-contractors and accordingly, the assessee issued account payee cheque in the name of such third parties. As observed by both Authorities below that the assessee failed to produce any supporting evidences in tune with the contentions made before both the Authorities below and now before this Tribunal, the Ld. AR fairly conceded that the assessee is ready to produce all the necessary evidences in support of his contentions. The Ld. AR prayed to remand the issue to the file of Assessing Officer for fresh examination in terms of the materials/ evidences produced before this Tribunal.

6. Shri S.P. Walimbe, the Ld. DR reported no objection in remanding the issue to the file of the Assessing Officer for fresh verification.

7. Therefore, in the interest of justice, we deem it appropriate to remand the matter to the file of the Assessing Officer for fresh verification for his consideration of the issue in terms of the evidences/ materials filed before

this Tribunal from Page No.14 to 413 and pass order accordingly. The assessee is at liberty to file evidences, if any, in support of his contentions. Thus, **Ground No.1 raised in appeal by the assessee is allowed for statistical purposes.**

8. **Ground No.2** raised by the assessee is against the order of the CIT(A) in confirming the disallowance made u/s.40A(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') in the facts and circumstances of the case.

9. Heard both sides and perused the materials available on record. We note that during the course of assessment proceedings, the Assessing Officer found that the assessee made payment to the extent of Rs.5,25,000/- in contravention to provision of Section 40A(3) of the Act. We note that Authorized Representative on behalf of the assessee conceded that the assessee violated the provisions of Section 40A(3) of the Act to an extent of Rs.1,50,000/- and thereby, the Assessing Officer disallowed an amount of Rs.5,25,000/-. The CIT(A) confirmed the amount to the extent of Rs.3,75,000/- and held the same was in contravention of provision to Section 40A(3) of the Act.

10. We note that no evidence whatsoever produced before both the Authorities below including this Tribunal showing the payment to the extent of Rs.3,75,000/- in consonance with the provisions of Section 40A(3) of the Act. The Ld. AR submitted that out of Rs.3,75,000/-, the assessee made payment through account payee cheques for an amount of Rs.80,000/- which is in accordance with provisions of Section 40A(3) of the Act, we find no evidence in support of which filed even before us. But however, the Ld. AR

prayed to remand this issue to the file of Assessing Officer for his limited verification and examination whether the amount of Rs.80,000/- was paid in accordance with Section 40A(3) of the Act. In view of the same, we confirm the disallowance made in contravention of Section 40A(3) of the Act to the extent of Rs.2,95,000/- (Rs.3,75,000/- - Rs.80,000/-). Therefore, we direct the Assessing Officer to examine the issue to an extent of Rs.80,000/- involved in ground No.2 and pass order accordingly. Thus, **Ground No.2 raised in appeal by the assessee is partly allowed.**

11. In the result, **appeal of the assessee is partly allowed for statistical purposes.**

Order pronounced on 12th day of November, 2020.

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 12th November, 2020.

SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-2, Pune.
4. The Pr. CIT-1, Pune.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	10.11.2020	Sr.PS/PS
2	Draft placed before author	10.11.2020	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		