

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.2128/Bang/2017
Assessment year : 2012-13

The Dy. Commissioner of Income-tax, Circle-5(2)(1), Bengaluru.	Vs.	Shri Rajashekar S Naregal, No.259, Kiran's Complex, 1 st Floor, 1 st Cross, 3 rd Main Road, Chamrajpet, Bengaluru-560 018. PAN – ABMPN 5137 G
APPELLANT		RESPONDENT

Assessee by	:	Shri S.V Ravishankar, Advocate
Revenue by	:	Shri Pradeep Kumar, CIT(DR)

Date of hearing	:	11.10.2021
Date of Pronouncement	:	11.10.2021

ORDER

Per Chandra Poojari, Accountant Member

This appeal by the Revenue is directed against the order of the CIT(A)-5, dated 31.07.2017. The relevant assessment year is 2012-2013.

2. The Revenue has raised following grounds of appeal:-

1	The order of the Commissioner of Income Tax (Appeals)-5, Bengaluru is opposed to law and not on the facts and circumstances of the case.
2	On the facts and in the circumstances of the case, the CIT(A) erred in allowing the assessee's ground with regard to disallowance of freight expenses u/s 40A(3), without appreciating the fact that the assessee paid cash amount of Rs. 6,41,07,371/- as freight expenses and did not produce any bills/vouchers before the assessing officer either during the assessment proceedings or during remand proceedings to substantiate the claim.
3	The CIT(A) while calling for Remand Report vide letter dated 17.10.2016 has not forwarded any bills/vouchers/invoices. The observations of CIT(A) are erroneous.
4	On the facts and in the circumstances of the case the action of CIT (A) of granting relief to the assessee without affording opportunity to the assessing officer to examine Bills & vouchers is in violation of provisions of Rule 46A of the Income Tax Rules,1962 and hence is contrary to law.
5	For these and other grounds that may be urged upon, the order of the CIT(A) may be reversed and the assessment order be restored.
6	The appellant craves leave to add, alter, amend or delete any other grounds on or before hearing of the appeal.

The brief facts of the case are as under:-

3. The assessment in this case was completed u/s 143(3) of the Income-tax Act vide order dated 30/3/2015. At the time of assessment, the AO noticed that the assessee incurred freight expenses by way of cash other than by the crossed cheque or DD amounting to Rs.6,41,07,371/- paid to M/s Shankar Transport. The assessee failed to explain the reason for payment of such a huge amount by way of cash. Hence, the AO invoked

the provisions of sec.40A(3) of the Income-tax Act and disallowed the entire amount of Rs.6,41,07,371/-. On appeal before the CIT(A), the assessee said to be furnished details of freight loads date-wise, lorry no. net weight and the gross amount paid along with vouchers for the month of September. According to the CIT(A) he has forwarded these vouchers and ledger copies to AO calling for his comments in the remand proceedings. There was no reply from the AO. The CIT(A) observed that on verification, he found that payments made towards the freight to the respective vehicles in a single day is less than Rs.20,000/- and not in excess of limit prescribed in sec.40A(3) and, therefore, found that there was nothing contravention of sec.40A(3). Further he observed that the assessee was forced to make payments to the lorry owners/drivers in cash as they insisted for cash payment only and he had no other option but to make payment in cash which makes it clear that consideration of business expediency factors have not been dispensed within the amended provision of sec.40A(3) w.e.f 1/4/2009. Further he observed that all the payments are genuine and invoking provisions of sec.40A(3) are not warranted. Accordingly, he deleted the addition made by the AO u/s 40A(3) of the Income-tax Act.

4. Against this, Revenue is in appeal before us by way of above grounds.

5. At the time of hearing, the ld.DR mentioned that there was no proper opportunity afforded to the AO to examine the bills and vouchers produced by assessee before the CIT(A) and the CIT(A) failed to give fair opportunity of hearing to the AO. The ld.DR, thus, requested that the issue may be remitted back to the AO for fresh consideration to examine all relevant records. The AR strongly opposed the argument of ld.DR and submitted that assessee has not produced any bills and vouchers before the CIT(A). Further, he submitted that the CIT(A) called for the remand report from the AO and submitted all the ledger accounts produced by the assessee before him to the AO. However, the AO failed to submit the remand report within the required time. As such, the CIT(A) decided the issue on merits, in favour of the assessee and there is no necessity of remanding the issue back to the file of AO, which is nothing but a miscarriage of justice.

6. We have heard both the parties and perused the records. The CIT(A) mentioned in his order that the

assessee has produced bills and vouchers, invoices and books of accounts before him. However these are not produced before the AO in the remand proceedings. Further, there is no discussion of observation of tax audit u/s 44AB of the Act in the order of the lower authorities. Hence, it is appropriate to consider the tax audit report filed by the assessee before the authorities and also all the relevant records to decide the issue afresh. Accordingly in the interest of justice, we remit the entire issue in dispute to the files of the AO for fresh consideration. The assessee has to file all the necessary records to support his case including tax audit report before the AO. The AO has to decide the issue afresh in the light of our observations.

7. In the result, the Revenue's appeal is allowed for statistical purposes.

Order pronounced in court on **11th Oct, 2021**.

Sd/-

SD/-

(N.A VASUDEVAN)

Vice President

Bangalore,

Dated, 11th Oct, 2021

/ vms /

(CHANDRA POOJARI)

Accountant Member

Copy to:

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

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2. Date on which the typed draft is placed
before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
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4. Date on which the fair order is placed
before the dictating Member
5. Date on which the fair order comes back to the Sr.
P.S.
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