

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri Shamim Yahya, Accountant Member

I.T.A. No.5772/Mum/2018
(Assessment Year 2014-15)

Shashee Dairy 904/905, Bldg NO.5 Garden Enclave Society Vasant Vihar, Thane(W) Mumbai-400 610 PAN : ABUFS3780P (Appellant)	Vs.	ITO, Ward-3(3) Room No.8, Ashar IT Park 6 th Floor, Road NO.16Z Wagle Industrial Estate Thane-400 604 (Respondent)
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Assessee by	None
Department by	Ms. Smita Verma
Date of Hearing	13.10.2021
Date of Pronouncement	03.01.2022

O R D E R

Per Shri Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-2 dated 26.06.2018 and pertains to assessment year 2014-15.

2. Grounds of appeal read as under:-

1. On the facts and in the circumstances of the case and in law. The Ld. AO and Ld. CIT(A)-3 erred in determining the income of the appellant at Rs. 15,24,890/- as against the income declared in the Return of Income at Rs. 8,94,590/-
2. On the facts and in circumstances of the case and in law, the Ld. CIT(A) erred in making an addition of Rs. 7,30,300/- on the basis of Disallowance of expenses u/s 40A(ia) and 40A(3).
3. On the facts and in circumstances of the case and in law, the Ld. A.O. and Ld. CIT(A)-3 erred in disallowing purchases made only on the basis of that payment was made in cash.

4. On the facts and in circumstances of the case and in law, the Ld. A.O. and Ld. CIT(A)-3 erred in disallowing interest paid to NBFC and other Financial Institutions merely because of Non-Deduction of TDS despite of providing interest certificates, confirmations and certificates in form 26A.

3. Brief facts of the case are as under:-

In this case the return of income, declaring income at Rs 8,94,590/-, was e-filed on 10.11.2014 and the same was processed u/s 143(1) of the Act. The assessee is a Partnership firm engaged in manufacturing, processing, refining distribution and trading of milk and milk products. Subsequently, the case was selected for compulsory scrutiny, therefore, the statutory notices u/s 143(2)/142(1) of the Act, along with detailed questionnaire, were issued and served upon the assessee. In compliance necessary details were furnished, examined and placed on the record. After considering the submissions, the assessment order u/s 143(3) of the Act, was finalized on 30.12.2016 at total income of Rs 16.24.590/- after making addition of Rs 4,16,022/-, u/s 40(a)(ia) for mm deduction of tax and Rs 3.14.728,-. u/s 40A(3) of the Act. for incurring expenditure in cash. Further during the year the assessee had paid interest, amounting to Rs 4.16.022/-, to Bajaj Ruser (P) Ltd (Rs 98.591/-), ACI Tenancies (Rs 59.776A), Tata Motors Finance Ltd (1,52,304.37), Tata Motors Finance Ltd. (Rs 99,644.53) and Magma Fencorp Ltd (Rs5,706/-), which are Non Banking Financial Companies, without deducting tax, as per provisions of Sec 194A of the Act, thereby violated the provisions of Sec 40(a)(ia) of the Act. The AO, , disallowed interest claim of Rs 4,16,022/-, as per provisions of Sec 40(a)(ia) of the Act added to the income of the assessee.

In addition to above, during the course of assessment proceedings, the AO noticed that the assessee had incurred certain payments in cash, in excess of limits provided, in the provision of Sec 40A(3) of the Act. The AO noticed that most of these cash payments were made to farmers, dairy farm owners, in villages for milk, transporters, etc.. as under-

Loose Milk Purchase (cow)(tanker)	Rs 2,20,300/-
Milk crates	Rs 40.515/-
SMP bags	<u>Rs 53.463/-</u>
Total	Rs.3,14,278/-

Since the assessee could not furnish the details of party / person to. whom the payments had been made, the AO, therefore, disallowed the aforementioned sum of Rs 3,14,278/-, by invoking the provisions of Sec 40A(3) of the Act.

4. On this issue of non deduction of TDS. The Ld.CIT(A) has held as under:-

I have carefully considered the facts of the case, findings of the AO in the assessment order, submission of the Ld. AR and material placed on record. From the facts of the case it is noticed that the AO had disallowed the interest expenditure of Rs. 4.16.022/-; paid to NBFCs Viz;. Bajaj Fincorp (P) Ltd. ACI Tenanciers. lam Motors Finance Ltd and Magma Fincorp Ltd.. paid against loans, for non deduction of tax at source, while paying ' crediting the said amounts, in favour of these NBFCs. During the course of appellate proceedings it is claimed that the appellant had taken loan from these NBFCs for business purpose and the repayments of these loans were made through equated monthly installments, which comprised of principal as well as interest amounts. It is further claimed that these companies do not accept EMTs net of TDS, therefore, it was not possible to deduct TDS on the said amounts.

It is also contended that these NBFCs are regularly filing their income tax returns, by offering the said interest incomes, received against loans advanced to the appellant and also paid due taxes. In support of above claim, the Ld. AR submitted a certificates from the Chartered Accountants, as per provisions of Sec 201(1) of the Act. of Tata.Motors Finance Ltd. & Magma Fin-corp Ltd, certifying that the interest income, received from the appellant, been incorporated in the returns of income filed with the department by paying due taxes, Likewise the appellant had also filed the interest certificate from AU Financiers (India) Ltd as well as Bajaj Fin-serv. certifying the principal and interest components in the EMIs fixed for repayment of loan and incorporation thereof in their respective returns of income. Accordingly it is claimed that the provisions of Sec. 40(a)(ia) of the Act are not applicable, therefore, the disallowance made by the AO may be deleted.

From the above facts it is seen that the appellant had borrowed loan for the business purpose ("for purchase of vehicles for business use), which was repaid through EMIs. The EMIs comprised of component of interest and principal amounts and was paid through ECS. Further these NBFCs have duly reflected these interests received, in their statements of income, filed with the department. In compliance, (he appellant had furnished certificates from Chartered Accountants of Tata Motors Finance Ltd and Magma Fin-corp Ltd, as well as interest certificates from the Au Financiers (India) Ltd and Bajaj Fin-serv, furnishing the break-up of principal and interest component in the EMIs for repayment of loans.

In view of the above facts, the claim of the appellant, in my considered view is admissible. The AO, therefore, is directed to allow the interest expenses, in respect of those NBFCs. in whose cases the appellant had filed the certificates from the accountants of concerned deductee(certifying the inclusion of said interest incomes in their returns of income and payments of due taxes there upon), after verifying the same. The appellant is hereby also directed to submit these certificates before the AO, for his verification and necessary action at his end. This issue of addition is decided accordingly

5. Against the above order, assessee is in appeal before the ITAT.

6. I have heard the Ld. DR and perused the records. As regards, this ground relating to interest paid to NBFC and others, I find that Ld.CIT(A) has passed reasonable order and he has directed the AO to verify and grant proportionate relief . I do not find any infirmity in the same. Hence, I uphold the same.

7. As regards, cash payment, Ld.CIT(A) has held as under:-

As regards cash payments, exceeding li.mil prescribed u/s 40A(3) of the Act is concerned it is contended that appellant's plant is located in remote backward area of Dhule district, where the transport facilities are not available. In case of short supply of milk, appellant has to ask other local dairy plants or local milk whole-sellers, to supply milk on urgent basis. In these circumstances, at any cost, it is not possible to make payments through banking channels, as the suppliers will not wait till clearance of payments. It is further claimed that the bank is situated about 20 Kms., away from plant, therefore, in this scenario it is compulsory to make payments by way of cash, therefore, the appellant was forced to make the cash payment. These purchases of milk were made from Shripur. As regarding cash payments against purchase of milk crates is concerned it is contended that the old and used are purchased from retailer of milk suppliers, who have excess quantity, which are at negligible prices as compared to new branded crates, therefore, payments were made in cash. The Ld. AR further contended that no milk processing plant can run without making these types of cash payments, therefore, the same are covered under the exception clause of the Act. The contention of the Ld.AR has been considered and noticed that he has not brought any material evidence on record to substantiate his claims and circumstances which have forced it to incur such payments in cash, that when appellant had made similar payments through banking channels. In the absence of any credible evidence regarding above claims., the contention of the appellant is not tenable, therefore, rejected and the disallowance of Rs 3,14,278/- , made u/s 40A(3) of the Act, by the AO, is hereby sustained and this ground to appeal to this extent is dismissed.

8. Against this order, assessee is in appeal before us.

9. I have heard the Ld.DR and perused the records. I find that why this payment cannot be considered under exemption in Rule 6DD u/s. 40A(3) has not been explained. Nor the Ld. DR could point out the same. In my considered opinion, the facts and circumstances narrated above fully support the assessee's plea that the impugned

payment falls under the ken of exemption to section 40A(3) contained under Rule 6DD. Hence, disallowance made in this regard is not legally sustainable. Hence, I set aside the order of Ld.CIT(A) and decide the issue in favour of the assessee.

10. In the result, the appeal is partly allowed.

Pronounced in the open court on 03.01.2022

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 03.01.2022

Thirumalesh, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai