

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

**BEFORE SHRI R.S. SYAL, VICE PRESIDENT  
 AND  
 SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER**

आयकर अपील सं. / ITA No.1024/PUN/2016  
निर्धारण वर्ष / Assessment Year : 2011-12

M/s. Dhavalamrut Milk Traders,  
 Dudh Sagar Marg, Hirapur Road,  
 Chalisgaon - 424101,  
 District - Jalgaon

PAN : AADFD8988P

Appellant

.....अपीलार्थी /

**बनाम / V/s.**

The Income Tax Officer,  
 Ward - 2(2), Jalgaon

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Ganoo  
 Revenue by : Shri S.P. Walimbe

सुनवाई की तारीख / Date of Hearing : 02-12-2021

घोषणा की तारीख / Date of Pronouncement : 11-02-2022

**आदेश / ORDER**

**PER S.S. VISWANETHRA RAVI, JM :**

This appeal by the assessee against the order dated 15-03-2016 passed by the Commissioner of Income Tax (Appeals)-2, Nashik [‘CIT(A)'] for assessment year 2011-12.

2. The only issue is to be decided is as to whether the CIT(A) is justified in confirming the addition to an extent of Rs.19,02,795/- u/s. 40A(3) of the Act.

3. Heard both the parties and perused the material available on record. We note that the assessee is a partnership firm engaged in the business of purchase and sale of milk on wholesale basis and conducts its business under the name and style as "M/s. Dhawalamrut Milk Traders". The AO, on verification of the books of account found that the assessee has made cash payment in excess of Rs.20,000/- in a day in contravention to the provisions of section 40A(3) of the Act. The details of cash payments were discussed by the AO in order at Page No. 2 and we note that the total cash payments to an extent of Rs.95,66,079/-. The assessee contended that the said payments were made to the farmers and agents were covered by exception as provided in Rule 6DD(e)(ii) and (k) of the Rules. The AO did not accept the said submissions and observed that the payment to an extent of Rs.85,15,722/- made to Charan Sarvo Petroleum is not covered by exception provided. Accordingly, he made addition to an extent of Rs.95,66,079/- and added to the total income of the assessee.

4. Before the CIT(A), it was contended that the expenditure incurred at a time for each vehicle is below Rs.35,000/- at the time of filling fuel in the vehicle in terms of proviso to sub-section (3) of section 40A of the Act. The CIT(A) examined such contention in terms of the said proviso and observed that the assessee incurred expenditure on different times below Rs.35,000/- to an extent of Rs.61,28,143/- since it is not in excess of Rs.35,000/- in terms of proviso to sub-section (3) of section 40A of the Act

deleted the amount to an extent of Rs.61,28,143/-. Further, another contention raised by the assessee that the payment to an extent of Rs.4,84,784/- made on bank holiday and the said amount is covered by exception provided in Rule 6DD(j). The CIT(A) examined the said issue and found satisfied that the payment of Rs.4,84,784/- were made on bank holiday and accordingly deleted. Thus, the CIT(A) has given relief of Rs.61,28,143/- + Rs.4,84,784/- totaling to Rs.66,12,927/- and against remaining addition the assessee before us.

5. The ld. AR referred to Circular issued by the CBDT and read the contents therein. On hearing the contents therein, we find the Circular is not applicable to the year under consideration. Further, the ld. AR placed on record a letter dated 24-11-2019 issued by the Charan Servo Petroleum and argued that the cheque issued by the assessee were returned/dishonoured many times. In view of the same the Charan Servo Petroleum refused to accept payments through cheque which made the assessee to make payment in cash. On perusal of the same and also hearing both the parties, we find that the contentions raised by the ld. AR taking support from the confirmation letter issued by the Charan Servo Petroleum regarding cash payment is not acceptable and rejected. A similar issue came up before this Tribunal for A.Y. 2010-11. This Tribunal vide its order dated 31-10-2017 in ITA No. 797/PUN/2015 clearly held vide Para No. 14 that the assessee could not furnish any explanation towards the cash payments for Diesel and Oil and in view of the same the Coordinate Bench confirmed the disallowance made under cash towards Diesel and Oil. In the year under consideration, we note that the amount involved in the ground is Rs.19,02,795/- which is undisputably made the

cash payment to the Charan Servo Petroleum as submitted by the Id. AR towards Petrol and Diesel, in our opinion, is similar to the issue in ITA No. 794/PUN/2015 for A.Y. 2010-11, therefore, applying the same, we find no interference from us. Accordingly, the order of CIT(A) is justified and the sole ground raised by the assessee fails and it is dismissed.

6. In the result, the appeal of assessee is dismissed.

Order pronounced in the open court on 11<sup>th</sup> February, 2022.

Sd/-  
(R.S. Syal)  
VICE PRESIDENT

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

पुणे / Pune; दिनांक / Dated : 11<sup>th</sup> February, 2022.  
रवि

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

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

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

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