

आयकरअपीलीयअधिकरण, 'ए'न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवंडॉ. एम.एल मीना, लेखा सदस्यके समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENTAND
DR. M.L. MEENA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.:708/CHNY/2019
निर्धारण वर्ष/**Assessment Year: 2015 - 2016**

Shri.Mugunda Prakash,
No.8, S.B.I Colony,
Perambur,
Chennai – 600 011.

PAN : AADPP 4827 F

(अपीलार्थी/Appellant) (प्रत्यर्थी/Respondent)

The Assistant Commissioner of
Income Tax,
Non-Corporate Circle – 10(1),
Nungambakkam,
Chennai – 600 034. T.N.

अपीलार्थीकीओरसे/Appellant by : Mr. S. Sridhar, Advocate
प्रत्यर्थीकीओरसे/Respondent by : Mr. AR.V. Sreenivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 07.03.2022
घोषणा की तारीख/Date of Pronouncement : 09.03.2022

आदेश /O R D E R

PER BENCH:

The appeal by the Assessee, is arising out of the orderdated 17.12.2018 of the Commissioner of Income Tax(Appeals)-12, Chennai (hereinafter referred as "CIT(A)"), in ITA No.99/CIT(A)-12/2017-18 for the Assessment Year 2015 - 2016.

2. In this appeal, the Assessee has challenged the confirmation of the addition of Rs.76,50,000/- by the learned

CIT(A) on the application of Section 40A(3) of the Income Tax Act, 1961 vide different ground, besides the addition of Rs.3,04,687/- on account of business promotion.

3. Briefly, the facts as per the records are that the Assessee is a proprietor of M/s. Sri Krishna Enterprises and M/s. Sri Krishna Transport made cash purchases of petrol in contravention to Section 40A(3) of the Income Tax Act, 1961 from various agencies on different dates, as reproduced by the Assessing Officer (hereinafter in short as "the AO") vide Page Nos.2 & 3 of the Assessment Order dated 26.12.2017, as under:

Sl. No.	Date	Description	Amount Rs.
(1)	20.04.2014	Purchase of petrol from Velavan Agencies	1,10,000/-
(2)	30.04.2014	Purchase of petrol from Velavan Agencies	1,10,000/-
(3)	31.05.2014	Purchase of petrol from Velavan Agencies	3,20,000/-
(4)	30.06.2014	Purchase of petrol from Sri Satya Agencies	2,90,000/-
(5)	30.09.2014	Purchase of petrol from Sri Satya Agencies	5,20,000/-
(6)	31.10.2014	Purchase of petrol from Velavan Agencies	9,60,000/-
(7)	30.11.2014	Purchase of petrol from Sri Satya Agencies	7,40,000/-
(8)	31.12.2014	Purchase of petrol from Velavan Agencies	12,10,000/-
(9)	31.01.2015	Purchase of petrol from Sri Satya Agencies	18,70,000/-
(10)	31.03.2015	Purchase of petrol from Velavan Agencies	15,20,000/-
TOTAL			76,50,000/-

The Assessing Officer contended that the Assessee failed to explain any business expediency for the payment made in cash for all the disputed purchases nor had given reasonable cause that stopped him in issuing cheques towards these purchases. Thus, the Assessing Officer issued a show-cause notice vide letter dated 13.12.2017 and as not being satisfied with the reply of the Assessee, confirmed the addition by observing, as under:

"Assessee vide letter dated 13.12.2017 was asked to show-cause as to why the payment made by cash should not be disallowed. In response, the Assessee has submitted a statement detailing the transactions. The statement was captioned as "credit purchase statement of accounts of supplier". Along with the statement confirmation from suppliers was also attached by the Assessee but there was no explanation for cash purchase. In the absence of reasoning or circumstance as specified in Rule 6DD of the Income Tax Rules, 1962 payment for the said purchase is disallowed and added to the income of the Assessee."

4. Aggrieved, the Assessee went in appeal before the Commissioner of Income Tax (Appeals) who has confirmed the action of the Assessing Officer by observing in paragraphs 9 & 9.1, as under:

"9. I have examined the transaction of the Appellant. He has entered into transactions for expenditure only with regular parties. He has purchased petrol from regular vendors repeatedly throughout the year. Bills have been made in such a way that a time, single bill does not cross the prescribed limits. A random analysis of copies of bills produced show that the bills are tailor made to suit the interest of the Appellant. For example, Bill No.1221 was issued to the Appellant on 01.08.2014 for Rs.19,863/- by

M/s. Velavan Agency, an Indian Oil Dealer. On 02.08.2014, Bill No.1222 for Rs.19,542/- was issued. On 03.08.2014, Bill No.1223 for Rs.19,520/- was issued. That means the said Oil dealer did not have any sales at all these days to anyone other than to the Appellant. Similar trend is seen throughout and also in respect of other Agencies from whom the Appellant has got the bills of purchase.

9.1. The Appellant has paid Rs.76,50,000/- to two dealers. The entire amount has been paid in cash. There are no extraordinary circumstances that forced the Appellant to make payment in cash. The case laws relied on by the Appellant are in the context of cash payments which had to be made on emergency situations, where Bank transactions were not possible. These dealers are the regular vendors for the Appellant. There is a running account with each one of them. In order to circumvent the provisions of Section 40A(3), the Appellant has obtained receipts of amounts below Rs.20,000/-. Even in the books of accounts, the relevant ledger was captioned as "Credit purchase statement of accounts of the supplier". It is clear from the facts that the Appellant was in the habit of purchasing the petrol regularly and was subsequently making lump-sum payments in cash periodically. Accordingly, the transactions are entered in the account books. It is not a case of making payment below Rs.20,000/- and accounting it in the books as such on the date of transaction

Disallowance of Rs.76,50,000/- has been rightly made and the same is confirmed."

5. Before us, the Id. Counsel for the assessee reiterated the submission made before the lower authorities. He contended that he does not rely on rule 6DD(j). He contended that the payments are of different times within the date for which the assessee has no idea that he has to pay to the same person on more than one occasion. Under the circumstances, in

principle, the Assessee cannot be statutorily restricted as contended in the statutory provisions.

Per contra, the learned Departmental Representative, Shri AR.V. Sreenivasan, Additional CIT stands by the impugned order.

6. We have heard the rival contentions and perused the materials available on record and gone through the orders of the lower authorities.

7. It is an admitted fact that the Assessee had made a payment of Rs.76,50,000/- in cash against the purchase of petrol through two different dealers. The learned CIT(A) has discussed that there was no extraordinary circumstances that forced the Assessee to make payment in cash. He also discussed that the case-law relied upon by the Assessee was not relevant to the facts of this case. The learned CIT(A) also mentioned that these two dealers were regular vendors of the Assessee and that the Assessee was having a running account with each one of them.

The learned CIT(A) has further observed that the Assessee was in the habit of purchasing petrol regularly and was subsequently making lumpsum payments in cash periodically

and accordingly the transactions were entered in the account books.

8. The learned Authorized Representative argued that these payments were made by the lorry drivers who handed over the cash to pay for fuel to their respective vehicles at the fuel station. He contended that there was no single payment that exceeded Rs.20,000/- and that the payments are of different times within the date for which the Assessee has no idea that he is to pay to the same person on more than one occasion. Under the circumstances, the Assessee cannot be statutorily restricted as contended in the statutory provisions. However, he has not produced any documentary evidences to substantiate that these payments were required to be made in order of the business expediency or emergencies or that of an exceptional circumstance as provided in Rule 6DD of the Income Tax Rules, 1962 is rebuttal to the findings of the learned CIT(A) towards the disputed purchases being added to the income of the Assessee by invoking the provision of Section 40A(3) of the Act.

9. On identical facts, the Madras Jurisdictional High Court in the case of "N. Mohammed Ali Vs. Income Tax Officer, Ward

- VII (2), Chennai reported in [2016] 65 taxmann.com 189
(Madras) has held as under:

16. *If the assessee is not entitled to a deduction under section 40A(3), the income chargeable to tax will go up and the tax payable by him will naturally go up. If it is not, the benefit goes to the assessee. Therefore, it is clear that this is a case which satisfies the twin requirements under section 263(1). Consequently, questions 1 and 2 are answered against the assessee.*

17. Question No.3:- *As we have stated earlier, the third question relates to the applicability of the provisions of section 40A(3). Section 40A deals with expenses or payments not deductible in certain circumstances. Under sub-section (3) of section 40A, any expenditure incurred by an assessee, if made to a person in a day, otherwise than by way of an account payee cheque drawn on a bank or account payee in excess of Rs.20,000/-, no deduction can be allowed. The details furnished in the show cause notice dated 18.2.2005 by the Commissioner show that the assessee had admittedly made payments of Rs.1,00,000/- on three different dates viz., 1.10.1999, 14.10.1999 and 20.10.1999. The assessee had made payments of Rs.2,00,000 on 31.10.1999, 2.11.1999 and 3.11.1999. All those payments are indicated in the books of accounts of the assessee to have been made to a supplier by name "Standard Fireworks". Similarly payments have been made to another supplier by name "Sivakasi Fireworks". Since the name of one supplier mentioned in the books of accounts of the assessee himself to whom a payment of more than Rs.20,000/- had been made on everyone of those days, the contingencies stipulated in sub-section (3) of section 40A have arisen. Hence, the third question is answered against the assessee.*

18. Question No.4:- *The fourth question revolves around business expediency. This question has arisen for consideration in view of the proviso found in sub-section (3) of section 40A. At this stage, it would be relevant to extract sub section (3) as well as proviso to sub-section (3) which reads as under:—*

"Where the assessee incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees, no deduction shall be allowed in respect of such expenditure.

Proviso to (3A) reads as follows:—

Provided that no disallowance shall be made and no payment shall be deemed to be profits and gains of business or profession under sub-section (3) and this sub-section where a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees, in such cases and under such circumstances as may be prescribed, having regard to the nature and extent of banking facilities available, considerations of business expediency and other relevant factors;"

19. *As seen from the proviso, the question in relation to sub-section (3) has to be examined with reference to the three things indicated in the proviso. They are (1) the nature and extent of banking facilities (2) considerations of business expediency and (3) other relevant factors.*

20. *In other words, under sub-section (3), where an assessee incurs an expenditure which involves payment of more than Rs.20,000/- to a single person on a single day, he is not entitled to any deduction in respect of such expenditure. The rule under sub section (3) is not very rigid. It admits of three exceptions, which are narrated in the proviso. If an assessee could prove that having regard to the nature and extent of banking facilities, or having regard to the consideration regarding business expediency or having regard to the other relevant factors, it would not be possible for him to make payments by way of cheque or demand draft, the assessee would, still, be entitled to deduction. Therefore, it is for the assessee to prove the existence of (1) nature and extent of banking facility that compelled him to make payment in cash (2) consideration of business expediency that compelled him to make payments in cash and (3) any other relevant factors that would justify such a payment.*

21. *In the case on hand, the books of accounts maintained by the assessee reflected that payments were made to three different suppliers. One was Standard Fireworks, the second was Indira Prints Pack and the third supplier was Sivakasi Fireworks. But, insofar as, Indira Prints Pack is concerned, payment was less than Rs.20,000/-. Therefore, that has not led to any problem. But, insofar as the other two suppliers are concerned, the books of accounts reflect that payments in excess of Rs.20,000/- to each one of those two suppliers was made on a day to day basis. This is seen from the tabulation given in the show cause notice under section 263, which reads as follows:—*

Name of supplier	Date of payment by cash	Amount	Remarks
Standard Fire Works	27.07.1999	1,200.25	
	01.10.1999	100,000	
	14.10.1999	100,000	
	20.10.1999	100,000	
	28.10.1999	150,000	
	31.10.1999	200,000	
	01.11.1999	159,000	
	02.11.1999	200,000	
	03.11.1999	200,000	
	04.11.1999	196,109.8	
	24.11.1999	150,000	
	28.01.2000	50,000	
Indira Prints Pack	06.10.1999	8,750	
Sivakasi Fire Works	05.11.1999	200,000	
	06.11.1999	200,000	
	06.11.1999	42,709.8	

22. In response to the show cause notice, the assessee submitted that they were not purchasing crackers from the companies themselves, but, were purchasing the crackers from the agents and retailers in the villages. The relevant para of the defence taken by the assessee in their reply to the show cause notice is extracted as under:—

"The retailers in the villages closes their shops after days business and visits the city for their requirements of purchases in late evening hours. They come to city by night 9 pm or so and the crackers business starts only after 9 pm. It goes upto 1 pm in the night. The parcels are made in the night only and the shop is opened in the next day by 11 am or so.

The assessee has made payments in cash each less than Rs.20,000/- only to the agent. The seller's representative visits the shop and collects the sale proceeds every now and then, and issue valid receipts. This happens, normally and mainly everyday evening upto night 1 pm."

23. But, unfortunately, the books of accounts do not disclose (1) either that payments were made to agents of those suppliers or (2) that such payments were made in bits and pieces. The table which we have extracted above shows the consolidation of payments made on every day to everyone of those suppliers. Sub-section (3) uses even the expression "aggregate of payment made to a person in a day" Therefore, any amount of explanation that the assessee gave in response to the show cause notice, could not have gone against the very entries made in the books of accounts.

24. We are not for a moment to be understood to suggest that the books of accounts should have been more carefully drawn. All that we are suggesting is that atleast the names of the agencies or agents or retailers to whom payments were made on a day to day basis, on behalf of the original manufacturers should have been mentioned. In the absence of any specific detail, the vague statements made in response to the show cause notice, cannot offset the entries made in the books of accounts. Therefore, we cannot find fault with the conclusion reached either by the Commissioner or by the Tribunal in this regard Hence, the fourth question of law is answered against the assessee."

10. In view of the above, we do not find any merit in the submissions of the learned Counsel for the Assessee on the issue of addition made u/s.40A(3) of the Act, on account of the

cash purchases by the Assessee. Accordingly, the order of the CIT(A) on this issue is confirmed.

11. The second issue is regarding disallowance of business promotion expenses of Rs.3,04,687/-.The learned CIT(A) has categorically held that this expenditure was disallowed for the reason that no documentary evidences was submitted during the appeal proceedings, before him. The learned Authorized Representative has failed to submit any documentary evidences before us, except stating that the same has been incurred as cheque and through credit card. Since, the Authorized Representative has failed to explain the reason for incurring the disputed business promotion expenses and also the nature of the disputed business promotion activity, we hold that the learned CIT(A) was justified in confirming the said addition of Rs.3,04,687/- claimed to be incurred towards business promotion expenses, so claimed.

Thus, this ground of appeal pertaining to the addition of Rs.3,04,687/- incurred towards business promotion expenses is rejected accordingly.

In the backdrop of the aforesaid discussions, the appeal of the Assessee is decided in the terms indicated above.

12. In the result, the appeal of the Assessee is dismissed.

Order pronounced in the court on 9th March, 2022 at Chennai.

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

Sd/-

(डॉ.एम.एल मीना)

(Dr. M.L. MEENA)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 9th March, 2022

IA, Sr. PS

आदेशकीप्रतिलिपिअग्रेषित/**Copy to:** 1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF