

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

**BEFORE SHRI BEENA PILLAI, JUDICIAL MEMBER AND MS.
PADMAVATHY S, ACCOUNTANT MEMBER**

ITA No.131/Bang/2018
Assessment year : 2014-15

Sri. T C Srinivasa M/S. Srinivasa Enterprises TKP Lodge Building NH4 Road, Sira Tumkur - 572137	Vs.	The Income Tax Office Ward 2 Tumkur
APPELLANT		RESPONDENT

Assessee by	:	Sri. Kirankumar, Advocate
Revenue by	:	Sri. Shehnawaz UI Rahaman Addl CIT

Date of hearing	:	13.04.2022
Date of Pronouncement	:	18.04.2022

ORDER

Per Padmavathy S, Accountant Member

This appeal is against the order of the Commissioner of Income Tax (Appeals) – 10, Bengaluru u/s. 250 of the Income Tax Act (the Act) dated 05.12.2017 for the assessment year 2014-15

Brief facts of the case

2. The assessee is proprietor of M/S.Srinivasa Enterprises, trader in hardware and electrical goods. For the assessment year 2014-15 the assessee had filed return of income on 30/09/2014 declaring total income of RS. 11, 52, 200. The return was processed u/s.143 (1) on 03/01/2015 in nil demand. The case was selected for limited scrutiny through CASS reason being cash deposit in savings account is more than the turnover. Notice u/s. 143(2) was served on the assessee's. During the course of assessment proceedings the assessing officer (AO) noticed that the assessee has made several payments exceeding ₹ 20,000 in cash to M/s. Arihant irrigation and M/s. Spectra pipes Private Limited Mysore for purchase of stock. The AO made disallowance u/s. 40 A (3) stating that assessee could not reduce any compelling reason for making cash payment. Aggrieved the assessee preferred an appeal before the CIT (A) who confirmed the disallowance made by the AO.

3. Before the Tribunal the assessee raised the following grounds

1. *Since the expenditure towards purchase of goods (stock-intrade) and the payments in cash therefore to suppliers M/s. Spectra pipes Private Limited Rs.84,00,273 and M/s.Arihant Irrigation Rs.15,98,921 having been accepted by the assessing officer is genuine it was not open to make addition of the same to the returned total income u/s. 40A(3) of the Act*

2. *The CIT (A) held in confirming the addition of Rs.99,99,194 without considering the fact stated in the affidavit that the suppliers insisted for cash payments through its 'sales executive/sales officer'*
 3. *Since the payment in cash to suppliers for purchase of goods Rs.99,99,194 M/s. Spectra pipes Private Limited Rs.84,00,273 and M/s.Arihant Irrigation Rs.15,98,921 were made because of business expediency the disallowance of the same u/s. 40A(3) of the act is unjustified*
 4. *Since the deposit of cash of ₹ 84 00 273 was made to the bank account of spectra pipes Private Limited disallowance of the same u/s. 40 A (3) is unjustified*
 5. *Since the cash payments to suppliers spectra pipes Private Limited and reasoned irrigation covered by rule 6DD(g) and 6DD(j) of the Income Tax Rules 1962, the disallowance u/s.40A(3) of Rs.99,99,194 is unjustified.*
4. The assessee also raised the following additional grounds before the Tribunal
- 6A. *The assessing officer year in converting the case from limited scrutiny to complete scrutiny*
 - 6B. *The assessing officer has violated the instruction number 7/2014, 20/2015 and 5/2016 issued by government of India Ministry of Finance New Delhi.*

6C. The disallowance of expenditure for cash payment to suppliers of stock-intrade u/s.40A(3) of Rs.99,99,194 being 48.17% on turnover ofRs.2,31,66,322 is unjustified.

5. During the course of the hearing the learned AR did not press for additional grounds and argued only based on merits. The learned AR submitted that

(i) The assessee made payment in cash for supply of goods as insisted by the suppliers by way of adjustment of accounts thereby lawfully discharging his liability for purchase of goods.

(ii) There is no avoidance or revision of tax involved in the said transaction.

(iii) The method of cash payment was found to be expedient easy and convenient as the account payee cheque courses inordinate delay in getting the cheque, transferred from assessee's bank account to suppliers bank account.

(iv)The assessee has filed an affidavit in support of the facts before the Honourable Tribunal.

(v) The cash payments made to spectra pipes Private Limited was directly deposited in the bank account of Spectra Pipes Private Limited.

(v) The Hon'ble Supreme Court in Attar Singh Gurmukh Singh vs ITO (191 ITR 667) held that consideration of business expediency and other relevant factors are not to be excluded.

Therefore the learned AR prayed that the disallowance made u/s. 40A(3) is unjustified and need to be deleted.

6. The learned DR supported the decision of the lower authorities. The learned DR mentioned that as per the affidavit para 4 it is not clear that the payments made to M/s. Spectra Pipes Private Limited is directly deposited into the bank account of the supplier as claimed by the assessee.

7. We heard the rival submissions and perused the material on record. The assessee has made cash payments to the details of which have been given in the AO's order page 3 to 5. The AO has mentioned in the order that the assessee himself has stated that there was no compelling reason for making payments in cash. The assessee claimed the statement to be not true and filed an affidavit before the CIT in this regard. The provisions of section 40A(3) reads as under -

40A. (1) The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other provision of this Act relating to the computation of income under the head "Profits and gains of business or profession".

(3) 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, or use of electronic clearing system through a bank account [or through such other electronic mode as

may be prescribed], exceeds ten thousand rupees, no deduction shall be allowed in respect of such expenditure.

Provided that no disallowance shall be made and no payment shall be deemed to be the 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, or use of electronic clearing system through a bank account [or through such other electronic mode as may be prescribed], exceeds ten 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 :

The exception to the above provision is prescribed under rule 6 DD.

8. We notice that the assessee has filed an affidavit before the Tribunal to the effect that

- (i) The assessee is innocent honest and has no knowledge of English-language
- (ii) The cash payments to M/s. Spectra Pipes Private Limited and M/s. Arihant Irrigation for the expenditure incurred because of easiness and convenience in order to settle the said suppliers account besides insistence from the suppliers
- (iii) The facts are that the suppliers M/s. Spectra Pipes Private Limited and M/s. Arihant Irrigation insisted cash payments to be made through their sales executive/sales officer who would visit

assessee's place from time to time. The 'receipt' issued by the suppliers would show that cash was being collected by the sales executive/sales officer.

(iv) The assessee is an agricultural and used to stay on every Sunday in his house which is in a village, where there is no banking facility and the sales executive used to collect cash on Sundays from the village

(v) The observations in paragraph 8 of the assessment order as during the course of hearing the assessee himself has submitted that there was no compelling reason or insistence from the supplier for making payment in cash were untrue, false and contrary to the facts.

9. The proviso to section 40A(3) states that for the purpose of making disallowance under the said section should be done having regard to the considerations of business expediency and other relevant factors. The assessee in the affidavit claims that the suppliers insisted for payments in cash which is a reason enough for making the payments in cash. The facts stated in the affidavit needs to be verified to confirm whether making the payment in cash is done for business expediency as claimed by the assessee. The Ld AR submission that the in the case M/s. Spectra Pipes Private Limited, the cash is directly deposited in the bank account of the supplier also needs to be verified on merits. Considering that the assessee's claims stated above needs verification basis which the allowability of the expenses need to be

decided, we are remitting the case back to the AO. The AO is directed to look at the facts afresh in the light of the affidavit filed by the assessee after giving reasonable opportunity of being heard to the assessee.

10. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in court on 18th April, 2022

Sd/-

(BEENA PILLAI)
Judicial Member

Sd/-

(PADMAVATHY S)
Accountant Member

Bangalore,
Dated, 18th April, 2022
/ vms /

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.

1. Date of Dictation
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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
.....
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.
6. Date of uploading the order on
website.....
7. If not uploaded, furnish the reason for doing so
.....
8. Date on which the file goes to the Bench Clerk
.....
9. Date on which order goes for Xerox &
endorsement.....
10. Date on which the file goes to the Head Clerk
.....
11. The date on which the file goes to the Assistant
Registrar for signature on the order
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12. The date on which the file goes to dispatch section
for dispatch of the Tribunal Order
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13. Date of Despatch of Order.
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