

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री महावीर सिंह, उपाध्यक्ष, एवं
डॉ। दीपक पी. रिपोटे, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.3167/Chny/2019
निर्धारण वर्ष/Assessment Year: 2014-15
&
Cross Objection No.13/Chny/2022
Assessment year: 2014-15

The Income Tax Officer,
Ward-2,
Namakkal.

(अपीलार्थी/Appellant)

v. M/s.NPA Foods & Feeds,
No.1/442/1,
AyyanarValagam,
Mudaliaipatty Bye Pass,
Namakkal-637 003.
[PAN:AAHFN 4382 M]
(प्रत्यर्थी/Respondent / Cross-
Objector)

Department by : Mr.Hema Bhupal, JCIT
Assessee by : Ms.K.C.Arathi, Adv.
सुनवाई की तारीख/Date of Hearing : 18.08.2022
घोषणा की तारीख /Date of Pronouncement : 24.08.2022

आदेश / ORDER

PER DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals), Salem, dated 08.08.2019 for the AY 2014-15 emanating from the order passed by the Assessing officer (AO) u/s.143(3) of the Act, dated 29.07.2016 and CO No.13/Chny/2022 is the Cross-Objection filed by the assessee in the Revenue appeal for the AY 2014-15.

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

1. The order of the Hon'ble Commissioner of Income-tax (Appeal) is opposed to the facts and circumstances of the case.

2 The assessee has not explained or proved the cash payment of more than Rs.20,000/- with specified reasons for his claim of Disallowance of deduction U/s.40A(3) of the IT Act, 1961.

3. The assessee was making a false claim of payment made to the various parties, it is clear violation of the provisions of Section 40A(3) of the IT Act,

4. Vide the assessee's reply letter dated 06-07-2016, the assessee has stated that " the cash payments were made in a unavoidable circumstances", The assessee has protested that the payments were made under unavoidable circumstances, but the assessee has not specified the reason. It is also stated that it is compulsory to purchase goods on cash. It is not an isolated payment made where Rule 6DD comes to the rescue of the assessee. Here, it is a clear violation of the provisions of section 40A(3) of the IT Act.

5. For the above reasons and other reason that may be adduced at the time of hearing, it is prayed that the Commissioner of Income Tax (Appeal)'s orders may be set aside and that of the Assessing officer's order restored.

3. The Id.AR submitted that the AO has erred in adding amount of Rs.3,22,39,485/- u/s.40A(3) of the Act. The Ld.AR submitted that the assessee is in the business of poultry feed supply and assessee had made payments in cash for purchase of poultry feed. These payments were made due to business necessity and all the payments are genuine. The Ld.AR invited our attention to the findings given by the Ld.CIT(A) that the AO has not doubted the genuineness of the transaction. The Ld.AR relied on the decision of the Hon'ble jurisdictional High Court in the case of CIT v. Chrome Leather Co. Pvt. Ltd. reported in 235 ITR 708 (1999).

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Therefore, the Ld.AR contended that the order of the Ld.CIT(A) may be upheld and order of the AO may be deleted.

4. On the other hand, the Ld.DR invited our attention to Para No.3 of the assessment order, wherein, it is specifically mentioned that the assessee identified five transactions totaling to Rs.6,90,963/- and claimed that these transactions are coming under Rule 6DD. The AO allowed the said claim of the assessee in Para No.4 of the assessment order. It is categorically mentioned in the assessment order that the assessee was making false claim for payments made amounting to Rs.3,22,39,485/-.

5. We have heard both the parties and perused the records. It is mentioned in the assessment order that the AO on verification of the day book maintained by the assessee, has observed that certain payments were made in cash which were exceeding Rs.20,000/- which was violation of Sec.40A(3) of the Act. The AO prepared a list of such payments and requested assessee to submit explanation. The assessee submitted explanation that due to business necessity these payments were made in cash. The assessee had purchased raw materials required for manufacturing poultry feed in cash. The Ld.CIT(A) has merely deleted the addition on the ground that the AO has not doubted the genuineness of the transaction. However, the statement of the Ld.CIT(A) is erroneous and contradictory to the facts of the case. It is observed that in the assessment order, the AO has categorically mentioned that the assessee

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was making false claim of payments. It means, the AO had doubted the genuineness of these payments. It is an admitted fact that these payments were made in cash exceeding Rs.20,000/-. Thus, the assessee has violated Sec.40A(3) of the Act. The facts of the case Chrome Leather Pvt Ltd (supra) relied by the Ld.AR are distinguishable. In the case of Chrome Leather Pvt Ltd (supra) , the Tribunal had given the finding that the 'payees' are identifiable and given a finding regarding genuineness of the payments. In these facts and circumstances of the case, the Hon'ble jurisdictional High Court in the case of Chrome Leather Pvt. Ltd. Co. (supra) gave the decision. However, in the case under consideration before us, the assessee has not filed any details about the payees. On perusal of the order of the Ld.CIT(A) and Assessment order, it seems that assessee had not filed any details of the persons to whom payments were made. Therefore, the payees are not identifiable and genuineness of the transaction is doubtful. Thus the case relied by the Lr.AR is not applicable to the facts and circumstances of the case.

6. Therefore, we are of the considered view that the AO has rightly made an addition of Rs.3,22,39,485/- on account of violation of Sec.40A(3) of the Act. Thus, the order of the AO on this issue is upheld and accordingly, grounds filed by the Revenue are allowed.

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CO No.13/Chny/2022:

7. Basically, the Cross-objections are supportive of the Ld.CIT(A)'s order. In earlier paragraphs, we have already given the findings that Ld.CIT(A) have made factual incorrect statements. The Ld.CIT(A) have made an incorrect statement that the AO has not challenged the genuineness of the payments, whereas in the assessment order, it is mentioned that the assessee was making false claim. The assessee failed to establish how his case is covered by the exceptions of the section 40A(3) of the Act. Therefore, the Cross-objection filed by the assessee is dismissed.

8. In the result, the appeal filed by the Revenue is allowed and the Cross-objection filed by the assessee is dismissed.

Order pronounced on the 24th day of August, 2022, in Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष/VICE PRESIDENT

Sd/-
(डॉ। दीपक पी. रिपोटे)
(DR. DIPAK P. RIPOTE)
लेखासदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,
दिनांक/Dated: 24th August, 2022.
TLN

आदेशकीप्रतिलिपिअग्रेषित/**Copy to:**

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