

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

श्री महावीर सिंह, माननीय उपाध्यक्ष, एवं
श्री जी. मंजूनाथा, , माननीय लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2390/Chny/2018
निर्धारण वर्ष /Assessment Year: 2011-12

M/s.S L P Lorry Transport Service,
F-12, John Kennedy Avenue,
Salem-636 016.
[PAN: AAHFS 5528 E]
(अपीलकर्ता/Appellant)

v. The Income Tax Officer,
Ward-1(4), 3, Gandhi Road,
Salem-636 007.
(प्रत्यर्थी/Respondent)

अपीलकर्ता की ओर से/ Appellant by : Mr.G.Baskar, Adv. &
Mr.I.Dinesh, Adv.
प्रत्यर्थी की ओर से /Respondent by : Mr.P.Sajit Kumar, JCIT
सुनवाई की तारीख/Date of Hearing : 21.09.2022
घोषणा की तारीख /Date of Pronouncement : 19.10.2022

आदेश / O R D E R

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals), Salem, dated 30.07.2018 and pertains to assessment year 2011-12.

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

- 1. The order of Ld. CIT(A) to the extent it confirms the order of assessment is wrong, illegal and unsustainable which springs out from misappreciation of facts.*
- 2. The Ld.CIT(A) failed to appreciate the fact that the payments made on a single day were towards separate invoices and different trips which cannot be construed as an aggregate of payments as contemplated in Sec.40A(3).*
- 3. The Ld. CIT(A) having not disputed the fact that the cash was deposited in the bank accounts of the sub-contractors ought not to have invoked Sec.40A(3).*

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4. The Ld.CIT(A) failed to consider that the sub-contractors insisted cash payment for expenditure which the nature of business calls for.

5. The Ld. CIT(A) ought to have seen that the cash was deposited as and when the sub-contractors required for meeting the postdated cheques issued for hire purchase installments.

3. The brief facts of the case are that the assessee is a partnership firm engaged in lorry transport business, filed its return of income for the AY 2011-12 on 27.07.2011 declaring total income of Rs.2,63,184/-. During the financial year relevant to AY 2011-12, the assessee has paid to sub-contractors for hiring lorries in cash in excess of prescribed limit provided u/s.40A(3) of the Act. The AO called upon the assessee to explain, as to why, cash payments in excess of prescribed limit shall not be disallowed u/s.40A(3) of the Act. In response, the assessee submitted that payment made to sub-contractors are genuine in nature and further, cash has been directly credited to sub-contractor's bank account for business exigency purpose. Therefore, provisions of Sec.40A(3) of the Act, cannot be applied. The AO, however, was not convinced with the explanation furnished by the assessee and according to the AO, the assessee has incurred expenditure in cash more than Rs.20,000/- in contravention of provisions of Sec.40A(3) of the Act, and thus, disallowed total cash payments paid to sub-contractors amounting to Rs.35,59,087/- u/s.40A(3) of the Act. The relevant findings of the AO are as under:

3. The assessee also produced vouchers for the said expenditure. The vouchers were carefully examined. It is seen that the assessee has made payments in respect of Hire Charges exceeding Rs.35,000/- on the same day. The said payments are listed in Annexure. The assessee contention that the payment is not single payment and relates to various trips is

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not correct. The assessee has made payments which are categorized as under

(1) Payment is made under the head Lorry Hire Charges / Lorry Hire advance to persons like M/s ML.Shivali Rai, Sharmila Devi, S.L.Roadways in cash exceeding Rs.35,000/- in same day and the payments were remitted in the recipient bank account in cash which is equivalent to payment in cash.

(2) Some of the Vouchers titled Trip Advance are without details of recipient.

(3) One payment of Rs.5 lakhs made on 31/03/2011 as trip Advance to 13 vehicles and each vehicle is paid Rs.38,500/-.

(4) In respect of Rs.6 lakhs paid on 31/03/2011 as Lorry Hire advance to ML as per cash book the assessee has not produced any vouchers.

The assessee has made payments attracting the mischief of section 40A(3). The payments as detailed in annexure amounting to Rs.35,59,087/- is disallowed u/s.40A(3) and added to income returned.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee submitted that cash has been directly credited to sub-contractors bank account due to emergency and such payments coming under proviso to s.40A(3) of the Act. The Ld.CIT(A) after considering relevant submissions of the assessee and also taken note of provisions of Sec.40A(3) of the Act, opined that the assessee could not furnish any evidences to prove its case that payment made in cash in excess of prescribed limit comes under exception as provided u/r.6DD of Income Tax Rules, 1962, and further, there is no business exigency in making cash payments. Therefore, opined that there is no error in the reasons given by the AO to make additions towards cash payment in excess of prescribed limit u/s.40A(3) of the Act and thus, sustained the additions made by the AO and dismissed the appeal filed by the assessee.

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5. The Ld.AR for the assessee referring to various documents including bank accounts of sub-contractors submitted that the assessee has no doubt paid cash for hiring lorries from sub-contractors in excess of prescribed limit. However, such payments have been directly credited to bank accounts of sub-contractors. The AR further submitted that there is a business exigency in making cash payments, because, the sub-contractors need to pay towards loan EMIs and if assessee does not make payment in cash, there is a inconvenience. Therefore, the assessee has directly credited cash through bank account and thus, argued that payment made by the assessee are genuine in nature which are outside the scope of provisions of Sec.40A(3) of the Act.

6. The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that what is required to be seen in light of provisions of Sec.40A(3) of the Act, is whether any expenditure has been incurred in excess of prescribed limit, otherwise than by an account payee cheque or bank draft or use of electronic clearance system but, genuineness or otherwise of payment is not a criteria to exclude those payments from the purview of said provision. If at all, the case of the assessee comes under any one of exception provided u/r.6DD of IT Rules, then it is the obligation of the assessee to file necessary evidences to prove that payments made towards expenditure comes under exception. In this case, the assessee has made cash payments in excess of prescribed limit to sub-contractors

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and thus, the AO has rightly disallowed cash payments u/s.40A(3) of the Act.

7. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that the assessee has incurred expenditure in cash in excess of prescribed limit u/s.40A(3) of the Act. In fact, the assessee had admitted the fact that it has paid cash to sub-contractors for hiring lorries and such payment has been directly credited to bank account of sub-contractors. The only arguments of the assessee was that payment made to sub-contractors are genuine in nature which are required to be made in cash for business exigency. The assessee has explained the reasons for making cash payment and according to the assessee, the sub-contractors were in need of money under urgent circumstances, for which, the assessee has deposited cash into their bank account. We find that although the assessee tries to make out a case of business exigency, but reasons given by the assessee to make cash payment does not come under any exception as provided u/r.6DD of IT Rules. Further, genuineness or otherwise of payment is not a criteria to exclude cash payment in excess of prescribed limit from the provisions of Sec.40A(3) of the Act. In this case, there is no dispute that the assessee has made cash payments in excess of prescribed limit and further reasons given by the assessee for making cash payment does not come under any exception as provided under u/r.6DD of IT Rules. The assessee had also failed to make out a case

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of business exigency in making cash payment, because, it was the claim of the assessee that cash has been directly credited into bank accounts of sub-contractors and said bank accounts are maintained in one bank. In our considered view, the assessee could have made payment through one of the of the modes provided u/s.40A(3) of the Act. Since, the assessee has paid in cash in excess of prescribed limit, the AO has rightly disallowed cash payment u/s.40A(3) of the Act. Hence, we are inclined to uphold the findings of the Ld.CIT(A) and reject the ground taken by the assessee.

8. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on the 19th day of October, 2022, in Chennai.

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

Sd/-
(जी. मंजूनाथा)
(G. MANJUNATHA)
लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,
दिनांक/Dated: 19th October, 2022.
TLN

आदेश की प्रतिलिपि ँ ग्रेषित/**Copy to:**

1. ँ पीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आकर आकुत (ं पील)/CIT(A)
4. आकर आकुत/CIT
5. विभागीं प्रतिनिधि/DR
6. गार्ड फाईल/GF