

**IN THE INCOME TAX APPELLATE TRIBUNAL GUWAHATI BENCH,
(VIRTUAL HEARING AT KOLKATA)**

**[BEFORE DR. MANISH BORAD, ACCOUNTANT MEMBER &
SHRI SONJOY SARMA, JUDICIAL MEMBER]**

I.T.A. No. 65/GTY/2019

Assessment Year: 2014-15

Sales Enterprises Pvt. Ltd. C/o. S.P. Bhati & Co. 1 st Floor, Ram Mandir Complex, Opp. Police Reserve, A.T. Road, Guwahati, Assam-781001. (PAN: AACCS 9078 B)	Vs.	ITO, Ward-3(4), Guwahati
Appellant		Respondent

Date of Hearing	28.07.2022
Date of Pronouncement	20.10.2022
For the Appellant	Shri S.P. Bhati, FCA
For the Respondent	Shri N.T. Sherpa, JCIT

ORDER

PER SONJOY SARMA, JM:

This appeal filed by the assessee to the assessment year 2014-15 is directed against the order of Id. CIT(A) -2, Guwahati dated 04.12.2018 which is arising out of assessment order u/s 143(3) of the Income-tax Act, 1961. The assessee is in appeal before the Tribunal raising the following grounds:

i. For that the ld. Assessing Officer is not justified in making addition of Rs. 1,43,57,902/-.

ii. For that the ld. CIT(A) is not justified in confirming the addition of Rs. 1,43,57,902/- u/s 40A(2)(b) even though amendment by Finance Act, 2012 as regards inapplicability of same to specified domestic transaction was brought to his notice.

iii. For that the ld. Assessing Officer is not justified in making addition u/s 40A(2)(b) & CIT(A) is not justified in confirming the same when Income Tax Act contains specific provision & procedure by way of Chapter X-Special Provision relating to avoidance of tax.

iv. For that the ld. CIT(A) is not justified in giving blanket directions u/s 150 of the I.T. Act, 1961.

v. The appellant craves the leave to take additional grounds at the time of hearing of appeal.”

2. The brief facts of the case are that the assessee is a Private Limited Company dealing in black pepper, ginger etc. on wholesale basis. The return was selected for scrutiny and during the course of scrutiny, the Assessing Officer noticed that the appellant has not filed Form No. 3CEB which was mandatory. The Assessing Officer conducted enquiry u/s 133(6) and come to the conclusion that appellant has paid excessive amount to related parties on account of purchases made and the AO made an addition of Rs. 1,43,57,902/- u/s 40A(2)(a).

3. Dissatisfied with the above order, assessee preferred an appeal before the Id. CIT(A), Guwahati-2. However, the appeal of the assessee was dismissed by the Id. CIT(A).

4. Aggrieved by the aforesaid order, the assessee is in appeal before the Tribunal. At the time of hearing, the Id. AR submitted before us that the Id. AO has made an addition without considering the explanation filed by the assessee during the course of assessment proceeding. Since the assessee's buying rate is not comparable with non related buyer's rate as the appellant/assessee buys goods as per the required quality only and the fair market value of goods i.e. black pepper did not properly ascertained in assessee's case by the AO. Besides that application of black pepper rates depends upon the quality of black pepper sold. Moreover, the Id. AR substantiate his argument, he submits before us that every purchase from the sister concern need not necessarily attract the provision of section 40A(2)(b) without considering the legitimate business requirement and quality of goods and in absence of any evidence to show that payment which is excessive or unreasonable having regard to the fair market value of the goods. He further submitted before us that since the AO did not determine the fair market value of goods purchased by the assessee in accordance with market rates of the goods. Therefore, the matter may be remand back to the file of AO to decide the issue afresh.

5. On the other hand, the Id. DR relied on the orders passed by the authorities below.

6. We after hearing the rival submission of the parties and material available on record since in the instant case as the Assessing Officer did not ascertained the fair market value of the goods i.e. black pepper. Therefore, we remand back the issue to ld. AO to decide the fair market value of the black pepper and directed the assessee to furnish comparative details of sales made by the Pecos Agencies to M/s. Seles Enterprise Pvt. Ltd. and to others so as to ascertain the fair market value of black pepper by the ld. AO in proper manner.

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

Order is pronounced in the open court on 20.10.2022.

Sd/-

(Manish Borad)
Accountant Member

Sd/-

(Sonjoy Sarma)
Judicial Member

Dated: 20.10.2022

Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant– Sales Enterprises Pvt. Ltd.
2. Respondent – ITO, Ward-3(4), Guwahati.
3. CIT(A),
4. CIT ,
5. DR, ITAT,

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata