

**आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'A' BENCH, CHENNAI**

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ ITA No.111/Chny/2020  
(निर्धारण वर्ष / Assessment Year: 2016-17)

<b>Income Tax Officer</b> Corporate Ward-6(3), Chennai.	<b>बनाम</b> / Vs.	<b>Shivaji Hi-Tek Foods Pvt. Ltd.</b> No.100, Medavakkam Main Road, Kilkattalai, Chennai-600 117.
<b>स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAVCS-9492-E</b>		
(□ पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी की ओरसे/ <b>Assessee by</b>	:	Shri Anandd Babunath (CA)-Ld. AR
प्रत्यर्थी की ओरसे/ <b>Revenue by</b>	:	Shri ARV Sreenivasan (Addl. CIT) –Ld. DR
सुनवाई की तारीख/ <b>Date of Hearing</b>	:	19-10-2022
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	21-12-2022

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by Revenue for Assessment Year (AY) 2016-17 arises out of the order of learned Commissioner of Income Tax (Appeals)-15, Chennai [CIT(A)] dated 08-11-2019 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s.143 of the Act on 14-12-2018. The sole grievance of the revenue is deletion of disallowance u/s 40A(3). The concise grounds filed by the revenue on 02.05.2022 read as under: -

1. The order of the ld. CIT(A) is contrary to the law and facts of the case.
2. The Ld. CIT(A) erred in deleting the addition of Rs.3,06,67,096/- made u/s 40A(3) of the Income Tax Act, 1961 by the AO for making cash payment to

suppliers, who are principal suppliers / traders and not agent of any farmer, grower etc.

3. The Ld. CIT(A) erred in relying on the decision of Hon'ble Supreme Court in the case of Attar Singh Gurmukh vs. ITO (1981) 59 Taxman 11 (SC) which actually supports the case of addition made by the AO both on facts and circumstances.

4. The Ld. CIT(A) has erred in allowing the appeal of the assessee, observing that the AO could not draw adverse inference from the statements u/s 131 recorded from the suppliers when no such statement(s) was recorded by the AO from the suppliers. Contrary to facts on record; and on this ground alone, the order of the CIT(A) is liable to be set aside.

5. The Ld. CIT(A) has erred to appreciate that exemption under Rule 6DD (e) or under Rule 6DD(f) r.w.s. 40A(3) of the act would only apply to growers, cultivators or producers of agricultural produces or their agents and not to traders and that the CIT(A) has failed to notice that the parties at Sl. Nos. 1,2,3,5,6,8,9,12,14,15 & 16 of paragraph 4.2 of the assessment order are traders and not growers, cultivators or producers of agricultural produces or their agents and hence, the payments made to them are not eligible for exemption under the aforesaid provisions.

6. The Ld. CIT(A) has erred to appreciate the fact that M/s Thirumagal & Co. (Palaniappa Mills) is situated at Dharapuram, Tirupur District about 450 Kilometers from the place of business of the assessee company and that there is no valid reason for making payment through cash considering travel cost, security etc. and hence, the provisions of Section 40A(3) of the Income Tax Act, 1961 is clearly attracted in this case and other suppliers.

2. The Ld. Sr. DR supported the impugned disallowance as made by Ld. AO and submitted that the payments were not covered by any exception carved out in Rule 6DD. The Ld. AR, on the other hand, supported the findings given in the impugned order. Having heard rival submissions, our adjudication would be as under.

### **Assessment Proceedings**

3.1 The assessee being resident corporate assessee is stated to be engaged in trading of rice. The assessee purchases rice from various states and repacks the same in its own containers. The assessee does not have any manufacturing unit of its own.

3.2 Upon perusal of details, it transpired that the assessee made purchases from various parties and made cash payment in excess of

Rs.20,000/- per day in violation of the provisions of Sec.40A(3). The same has been tabulated in para 4.2 of the assessment order. During this year, the payment aggregated to Rs.306.67 Lacs. The same led Ld. AO to invoke the disallowance u/s 40A(3). During the course of assessment proceedings, the account confirmation was obtained from two major parties who confirmed the transactions with the assessee and receipt of money from assessee. The assessee, accordingly, submitted that the payments were genuine and bona-fide and no such disallowance would be warranted.

3.3 Regarding exceptional circumstances, it was submitted that the company was formed on 05.06.2015 and this was the first assessment for the assessee company. The assessee was new to suppliers and the suppliers insisted immediate payment before delivery of rice. Under these circumstances, the assessee had no option but to follow the existing rice trading practice to carry on its business. The assessee submitted that as per Rule 6DD, the payment made for the purchase of agricultural produce to the cultivator would not fall within the mischief of Sec. 40A(3) .

3.4 However, Ld. AO noted that the rule refers to agricultural 'produce' and not to agricultural 'product' and therefore, the claim could not be accepted since the rice could not be termed as agricultural 'produce'. Accordingly, the amount of Rs.306.67 Lacs was added to the income of the assessee u/s 40A(3).

### **Appellate Proceedings**

4.1 During appellate proceedings, the assessee relied on Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987 which define agricultural produce to mean any produce of agriculture whether

processed or unprocessed as specified in the schedule. The schedule specifies 'Rice in all forms' as agricultural produce under Cereals. The assessee also referred to the decision of Hon'ble Apex Court in **Attar Singh Gurmukh Singh Vs ITO (59 Taxman 11)** wherein it was held that the terms of Sec. 40A(3) were not absolute. The consideration of business expediency and other relevant facts are not excluded. It was open for assessee to demonstrate the circumstances under which the payment as prescribed u/s 40A(3) was not practicable or would have cause genuine difficulty to the payee. Further, the provisions of Sec.40A(3) and Rule 6DD were intended to regulate the business transactions and meant to prevent the use of unaccounted money. The assessee also relied on the decision of this Tribunal in **Shri K. Babu vs. ACIT (ITA No.181/Chny/2019; dated 19.07.2019)** rendered under similar factual matrix.

4.2 The Ld. CIT(A) observed that as per Rule 6DD(e)(i), payment for agriculture produce would be exempt from disallowance u/s 40A(3). The payment was made by the assessee in cash as per regular market practice. The provision of Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987 define cereal to mean rice in all forms. Further, in terms of Rule 6DD(k), the payment to agents on behalf of principal was exempt from disallowance u/s 40A(3). As per the stated regulations, the 'commission agents' means a person who by himself or through his servants, buys and sells agriculture produce by another persons, keeps it in his custody and controls it during process of its purchase and sale and collects payment thereof. As per assessee's submissions, the assessee bought rice from mills who acted as agents

on behalf of the assessee to procure paddy from cultivators, hurred into rice and sold it to the assessee.

4.3 Finally, concurring with assessee's submissions, Ld. CIT(A) deleted the impugned addition by observing as under: -

6.6 In the above decision the assessee purchased leather from a supplier who in turn purchased from butchers. The Hon'ble ITAT has held that since the supplier acted as assessee's agent it would be exempted as per Rule 6DD(k). The AR has submitted that in the assessee's case too, the rice mill owner acted as agent. The AR has contended that the aforesaid decision of Hon'ble ITAT, Chennai is squarely applicable to the appellant's case. Besides, the AR has relied on the decision in the case of Attar Singh Gurumukh Singh Vs. ITO [1980] 59 Taxman 11 (SC), reproduced above on page 15 & 16.

6.7 The AR has further drawn attention to the AO's issue of notices to suppliers and recording of statement u/s.131, the AR has stated that the AO recorded statement from two suppliers namely M. Selvanambi and M/s. Thirumagal & Co. who appeared before the AO and confirmed that they supplied rice to the appellant by collecting payment in cash. The AR has submitted that those two suppliers supplied rice to the assessee for Rs.2.30 crore out of total purchase of 3.06 crore which constituted 75%. The AR has argued that the deposition of the suppliers before the AO has proved beyond doubt the genuineness and the circumstances under which the appellant purchased rice by paying cash to the suppliers. Perusal of the assessment order reveals that the AO has not referred to the statements recorded from those two suppliers. It appears that the AO could not draw adverse inference from the statements in which both the suppliers have confirmed the supply of rice to the appellant by collecting payment in cash.

6.8 In view of the above remarks, and respectfully following the decision of Hon'ble ITAT, Chennai in the case of from Mr.K. Babu Vs. ACIT cited supra, I find that the AO's disallowance u/s 40A(3) is not sustainable as the appellant's payment in cash for purchase of rice is very much covered under the exemption classified under rule 6DD(e)(i) and (k) of Income-Tax Rule.

Therefore, the AO's addition by disallowance of Rs.3.06 crore u/s 40A(3), is deleted. The appellant's grounds are allowed.

7. In the result, the appeal is allowed.

Aggrieved as aforesaid the revenue is in further appeal before us.

### **Our findings and Adjudication**

5. We find that the basic facts are not in dispute. The assessee purchased rice and made cash payments. The majority of these transactions have been confirmed by the suppliers of the assessee. The only reason to disallow the same is the fact that the payment has

been made in cash in excess of Rs.20,000/- per day. From the fact, it emerges that the assessee is a corporate entity and this is the first year of its operations. Therefore, the submissions that the suppliers insisted on cash payment before delivery of rice and the payment was made as per regular trade practice could not be disregarded. The assessee would have no option but to follow the existing rice trading practice to carry on its business.

6. It could also be seen that agriculture produce is nowhere defined in the Act. In such a case, the assistance could be taken from the provision of Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987 which define agricultural produce to mean any produce of agriculture whether processed or unprocessed as specified in the schedule. The schedule specifies 'Rice in all forms' as agricultural produce under Cereals. The same would support the case of the assessee in terms of Rule 6DD(e)(i). The application of Rule 6DD(k) as applied by Ld. CIT(A) is duly supported by the decision of this Tribunal in **Shri K. Babu vs. ACIT (ITA No.181/Chny/2019; dated 19.07.2019)** from which an analogy could be drawn that the rice mill acted as agent for the assessee. Therefore, the same could not be faulted with.

7. Finally, considering the facts and circumstances of the case, we do not find any reason to interfere in the impugned order.

8. The appeal stands dismissed.

Order pronounced on 21<sup>st</sup> December, 2022.

Sd/-

(MAHAVIR SINGH)

उपअध्यक्ष / VICE PRESIDENT

चेन्नई / Chennai; दिनांक / Dated : 21-12-2022

EDN/-

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखासदस्य / ACCOUNTANT MEMBER

**आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF