

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND
Ms. PADMAVATHY S, ACCOUNTANT MEMBER

| |
|---------------------------------------|
| ITA Nos. 1021 to 1024/Bang/2022 |
| Assessment years : 2016-17 to 2019-20 |

| | | |
|--|-----|---|
| Puradakoppalu Battagowda Karigowda, PWD Contractor, Puradakoppalu Dudda Hobli, Mudagandur Post, Mandya. PAN : AHLPK 6049B | Vs. | The Deputy Commissioner of Income Tax, Central Circle, Mysuru. |
| ASSESSEE | | RESPONDENT |

| | | |
|---------------|---|---|
| Assessee by | : | S/Shri K.R. Vasudevan & Ankur Pai, Advocates |
| Respondent by | : | Shri Sunil Kumar Singh, CIT-2(DR)(ITAT), Bengaluru. |

| | | |
|-----------------------|---|------------|
| Date of hearing | : | 07.02.2023 |
| Date of Pronouncement | : | 09.02.2023 |

ORDER

Per Padmavathy S., Accountant Member

This appeal is against the order of CIT(Appeals)-2, Panaji dated 25.8.2022 for the AY 2016-17 to 2019-20.

2. The assessee is a PWD contractor carrying out construction projects like laying of roads for Govt. entities. The assessee is also the owner of stone crusher business carried on in the name of M/s. Sri Venkateshwara Stone Crusher. The assessee filed the return of income for the impugned AY as per details given below:-

| AY | Date of filing | Income returned |
|---------|----------------|-----------------|
| 2016-17 | 27.9.2016 | 1,43,41,570 |
| 2017-18 | 22.9.2017 | 2,04,72,120 |
| 2018-19 | 30.10.2018 | 2,29,95,590 |
| 2019-20 | 23.10.2019 | 2,31,83,990 |

3. There was a search and seizure conducted u/s. 132 in the case of Sri Podili Ravi Shankar & Ors. on 24.4.2018 and a warrant of authorisation was issued in the name of assessee. During the course of search, at the premises of the assessee, documents showing unaccounted sale of jelly, M sand and dust were found and seized. Vouchers evidencing unaccounted purchases of boulders were also seized. In a statement recorded u/s. 131 the assessee accepted that neither the purchases nor the sales for which evidence were found were accounted in the books of accounts. The assessee accordingly accepted the additional income from the Crusher Unit by filing return of income u/s. 153A for the impugned AY including the income offered during the course of search.

4. The AO while completing the assessment u/s. 153A r.w.s. 143(3), besides considering the additional income offered made a disallowance u/s. 40A(3). The AO held that the following payments were made in cash exceeding Rs.20,000 which is in violation of section 40A(3) and accordingly disallowed the same.

| AY | Addition made u/s. 40A(3) [Rs.] |
|---------|------------------------------------|
| 2016-17 | 67,54,114 |
| 2017-18 | 27,57,875 |
| 2018-19 | 3,29,35,190 |
| 2019-20 | 9,34,694 |

5. Aggrieved, the assessee filed an appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee and upheld the order passed by the AO. Aggrieved, the assessee is in appeal before us.

6. Ground No.1 is general and ground No.3 is consequential. Accordingly these grounds do not warrant a separate adjudication.

7. Ground No.2 relating to disallowance u/s. 40A(3) which is common for all the appeals read as follows:-

“1. General grounds:

The order dated 25 August 2022 passed learned Commissioner of Income-tax (Appeals)-2, Panaji [“Ld CIT(A)/I] under upholding the assessment order dated 24 February 2021 passed by the learned Assessing Officer, Deputy Commissioner of Income-tax, Central Circle, Mysuru (”Ld AO/I) under section 143(3) read with section 153A of the Income-tax Act, 1961 (”Act/I) for the AY 2016-17 is contrary to the facts and circumstances of the present case and is not in accordance with law.

2. Grounds relating to disallowance under section 40A(3) - Rs.67,54,114/-

The grounds mentioned hereinafter are without prejudice to one another.

2.1 The Ld CIT(A) erred in upholding the assessment order passed by the Ld AO making disallowance of Rs.67,54,114/- under section 40A(3) of the Act.

2.2 The Ld CIT(A) and the Ld AO erred in making adjustment under section 40A of the Act to the income accepted and declared by the Assessee on the estimation made by the Ld AO during the search proceedings.

2.3 The Ld CIT(A) and the Ld AO erred in not appreciating the payment model of the Assessee for purchase of boulders for the crusher.

2.4 The Ld CIT(A) and the Ld AO erred in not appreciating that the Assessee made payments to the farmers supplying the boulders were made in cash through the tractor drivers who distributed the same among farmers and no payment exceeding Rs.20,000/- was made to anyone farmer or supplier per day and per farmer.

2.5 .The Ld CIT(A) and the Ld AO erred in not appreciating that the payments were covered under Rule 6DD(g) of the Income-tax Rules, 1962 ("Rules") as there were no banks near the place of crusher and the farmers supplying the did not have bank accounts."

8. The Id AR submitted that the boulders are supplied by the farmers through tractors and at the end of each day, the Assessee makes the payments to the farmers through the tractor drivers who collect the payment and distribute the same to the farmers. There is no bank near the place of the crusher to make day-to-day payments and most of the farmers who supply the boulders do not have bank accounts. If the payments are not made in cash, the farmers refuse to supply the boulders to the Assessee. In this background, the Id AR submitted that the income from stone crushing business was declared by the Assessee only in the return of income filed in response to 153A

notice and that the income declared by the Assessee is as per the turnover and profit computed by the Ld AO for which a specific query was raised while recording the statement under section 131 of the Act (refer page 2-3 AO order). It is submitted that the AO in the said computation has accepted that the Assessee purchases boulders which are the raw material for the stone crushing unit and after considering the purchase and the turnover the AO has estimated business income at 10% of the sales which has been accepted by the Assessee since he was not able to produce all the vouchers. The Assessee having accepted the income determined by the AO on estimation basis, then the AO is not correct in making a further adjustment under section 40A of the Act. The Id AR submitted that the disallowance made by the Ld AO and upheld by the CIT(A) is directly linked to the profit determined by the Ld AO on estimation basis. The Id AR also submitted that neither the Ld AO nor the CIT(A) have doubted the genuineness of the payment that it is for purchase of boulders but have invoked section 40A(3) only for the reason that the payments in cash under a single voucher were exceeding Rs.20,000/-. The Id AR further submitted that it has not claimed any expenditure in its return of income and the gross profit takes care of amount incurred on purchases, etc., and hence, there is no need of further disallowance under section 40A of the Act. The Id AR relied on the following decisions in support of its arguments:

- a. Allahabad high Court in Banwari Lal Banshidhar (1998) 229 ITR 229 (Allahabad);
- b. Madras High Court in CIT v S Mohammed Dhurabudeen [Tax Case (Appeal) No. 885/2007];

- c. Punjab & Haryana High Court in CIT (Central) v Smt Santosh Jain (2008) 296 ITR 324 (Punjab & Haryana);
- d. Punjab & Haryana High Court in CIT (Central) v Gobind Ram (2014) 48 taxmann.com 14 (Punjab & Haryana);
- e. Madras High Court in CIT v Amman Steel & Allied Industries (2015) 377 ITR 568 (Madras);
- f. Rajasthan High Court in PCIT v Jadau Jewellers & Manufactures (P) Ltd (2018) 409 ITR 85 (Rajasthan).

9. The ld AR also presented arguments with regard to applicability of Rule 6DD exceptions in assessee's case. However for the purpose of adjudication we will consider only the contentions raised with regard to whether disallowance u/s.40A(3) can be made when the profit is calculated on estimated basis.

10. The ld. DR supported the order of the lower authorities and also placed reliance on the decision of the Mumbai bench of the ITAT in the case of *ITO v. D.D. Hazare, (1994) 48 ITD 595 (Mum)* in this regard.

11. We heard the rival submissions and perused the material on record. The main contention of the assessee with regard to the disallowance u/s. 40A(3) is that when the income declared during the course of search is based on estimation, then there cannot be a separate disallowance u/s. 40A(3). We notice that the Hon'ble High Court of Allahabad in the case of *CIT v. Banwarilal Bansidhar, [1998] 229 ITR 229 (All)* had considered a similar issue and held that –

“All the three questions, referred to this court, revolve round the same controversy. The question for consideration is when no deduction was sought and allowed under section 40A(3), was there any need to go into section 40A(3) and rule 6DD(j). We see force in the view taken by the Appellate Tribunal that when the income of the assessee was computed applying the gross profit rate and when no deduction was allowed in regard to the purchases of the assessee, there was no need to look into the provisions of section 40A(3) and rule 6DD(j). No disallowance could have been made in view of the provisions of section 40A(3) read with rule 6DD(j) as no deduction was allowed to and claimed by the assessee in respect of the purchases. When the gross profit rate is applied, that would take care of everything and there was no need for the Assessing Officer to make scrutiny of the amount incurred on the purchases by the assessee.

No law contrary to the view taken by the Tribunal has been shown by standing counsel.

In the alternative, the Tribunal recorded a finding on the ingredients of section 40A(3) and rule 6DD(j). Since we have agreed with the primary finding recorded by the Tribunal, we think it is not necessary for us to go into the alternative finding recorded by the Tribunal.

With these observations, questions Nos. 1 and 3 are answered in the affirmative, that is, in favour of the assessee and against the Revenue. Question No. 2, on which finding was recorded in the alternative, is returned unanswered.”

12. In assessee’s case, we notice that the assessee has conceded the addition made towards unaccounted sale during the search proceedings. We also notice that the additional income has been computed on an estimated basis at 10% of sales. The relevant part of the AO’s order in this regard is extracted as below:-

“3. **Unaccounted sales in Stone Crusher:** Sri P B Karigowda owns a stone crushing unit in the name and style of Sri Venkateshwara stone Crushers located at Ganangur, Srirangapatna Taluk, Mandya District and was producing material like jelly, M-sand and dust. During the course of search,

evidences for unaccounted sales of jelly, in sand and dust were found and seized. Vouchers evidencing unaccounted purchases of boulders were also found and seized. In his statement u/s 131 recorded after the search on 25.02.2019 has accepted that neither the purchases nor sales for which evidences were found were accounted in the books of account. From the evidences available it can be concluded that though Sri Venkateshwara stone Crushers was functioning during financial years 2014-15 to 2018-19, however in his return of income filed prior to the search, the assessee has not shown any income from this stone crusher unit. In his statement u/s 131 recorded after the search, the ADIT (Inv) proposed to estimate income as under for various years based on the purchase vouchers of boulders which were available for 5 years:

Q.11 From the details of cost and output as discussed in reply to question number 10 above the sales turnover (of crusher unit) and gross profit over it @ 10% is estimated as under-

| FY | AY | Amount for Boulder purchase (Rs) | Total Quantity in tonnes (Rs.215 per tonne) | Sales turnover (Rs.360 per tonne) | Business income @ 10% of sales |
|--------------|---------|----------------------------------|---|-----------------------------------|--------------------------------|
| 2014-15 | 2015-16 | 33,39,459 | 15,532 | 55,91,520 | 5,59,150 |
| 2015-16 | 2016-17 | 90,75,941 | 42,213 | 1,51,96,680 | 15,19,670 |
| 2016-17 | 2017-18 | 45,95,205 | 21,373 | 76,94,280 | 7,69,430 |
| 2017-18 | 2018-19 | 3,37,79,800 | 1,57,115 | 5,65,61,400 | 56,56,140 |
| 2018-19 | 2019-20 | 5,64,100 | 2,623 | 9,44,280 | 94,430 |
| Total | | 5,13,54,505 | 2,38,856 | 8,59,88,160 | 85,98,820 |

Ans. I have gone through the above said estimation. I accept the business income from my crusher unit across financial years 2014-15 to 2018-19 as estimated above. I will declare this income over and above the business income already deduced by me for those years."

In the return of income filed u/s 153A, the assessee has offered additional income on account of undeclared profit of Rs.

15,19,670 estimated as above in the statement u/s 131, The reason for estimation was that the sales registers were not available for the year whereas purchase vouchers for boulders were available. During the year Rs. 90,75,941 was the expenditure incurred for the purchase of boulders for which purchase vouchers have been seized in A/PBK/02, A/PBK/03, A/PBK/04, A/1)BK/05 and A/PBK/06 for the period 01.04.2015 to 31.03.2016. The source for these purchases is stated to be sales made earlier and not accounted in the books. From these vouchers the average purchase rate of boulders is worked out and the sale rate is determined and OP of 10% is estimated after taking into account other costs incurred for production. Penalty u/s 271(1)(c) is initiated for concealment of income of Rs. 15,19,670 resulting out of unaccounted sales in the crusher unit.”

13. From the above, it is noted that the unaccounted purchases were the basis for estimation of the additional income and such unaccounted purchases were arrived at based on the purchase vouchers seized during the course of search (A/PBK/01 to A/PBK/22). We also notice that the same seized material has been used by the AO for analysing the payments made in excess of Rs.20,000 and accordingly to arrive at the disallowance u/s. 40A(3).

14. The ratio laid down by the Hon’ble Allahabad High Court in the case of *Banwarilal Bansidhar (supra)* is that when the income of the assessee is computed applying the Gross Profit rate and when no deduction was allowed in regard to the purchases of the assessee, there was no need to look into the provisions of section 40A(3). From the table extracted in the earlier part of this order, it is an undisputed fact that the additional income of the assessee is arrived at based on estimated profit rate without allowing any specific deduction towards

purchases. Therefore, in our view, the ratio laid down by the Hon'ble Allahabad High Court is applicable to assessee's case and respectfully following the same, we hold that no separate disallowance u/s. 40A(3) can be made in assessee's case. The disallowance made by the AO for all the assessment years is deleted.

15. In the result, the appeals are allowed in favour of the assessee.

Pronounced in the open court on this 09th day of February, 2023.

Sd/-

(N V VASUDEVAN)
VICE PRESIDENT

Sd/-

(PADMAVATHY S)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 09th February, 2023.

/Desai S Murthy/

Copy to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.