

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

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं
श्री मंजूनाथा .जी, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.586/Chny/2022
निर्धारण वर्ष /Assessment Year: 2016-17

M/s.R.K.Powergen Pvt. Ltd.,
14, Dr. Giriappa Road,
T. Nagar,
Chennai-600 017.
[PAN: AABCR 8680 H]
(अपीलार्थी/Appellant)

v. The Asst. Commissioner-
of Income Tax,
Central Circle-1(1),
Chennai.
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.V.Ravichandran, CA
प्रत्यर्थी की ओर से /Respondent by : Mr.M. Rajan, CIT
सुनवाई की तारीख/Date of Hearing : 27.02.2023
घोषणा की तारीख /Date of Pronouncement : 28.02.2023

आदेश / ORDER

PER MANJUNATHA.G, AM:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-18, Chennai, dated 24.05.2022 and pertains to assessment year 2016-17.

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

- 1. The Order of the learned Commissioner of Income Tax (Appeals) is contrary to law and the facts of the case.*
- 2. The impugned order has been passed without application of mind, without taking note of the evidence filed and the submissions made.*
- 3. The learned Commissioner of Income Tax (Appeals) ought to have appreciated that the provisions of section 40A(3) do not apply to the purchase of bio-mass and for transport payments.*
- 4. The appellant craves leave to file additional grounds.*

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5. For these and other grounds that may be adduced at the time of hearing, it is prayed that the returned income be accepted and justice rendered.

3. The brief facts of the case are that a search and seizure operations u/s.132 of the Income Tax Act, 1961 (in short "the Act") was carried out in M/s.Sri Ramachandra University Trust Group of cases on 23.11.2015. As a part of search operation, search was also conducted in the business premise of the assessee. During the course of search, loose sheets and books were seized. The case was taken up for scrutiny and during the course of assessment proceedings, it was noticed that the assessee has made cash payment in excess of Rs.20,000/- in violation of provisions of Sec.40A(3) of the Act. In response, the assessee submitted that each cash payment to a party on one occasion does not exceed the prescribed limit and further, although aggregate of said cash payment exceeding Rs.20,000/- per day to a person, but the assessee explained the reasons for making cash payments. The AO, however, was not convinced with the explanation of the assessee and according to the AO, the assessee has made cash payment to transportation charges and debited to supplier's a/c and each cash payment was in excess of Rs.20,000/- as prescribed u/s.40A(3) of the Act. Therefore, rejected the arguments of the assessee and made addition of Rs.8,64,900/- u/s.40A(3) of the Act.

4. The assessee carried the matter in appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has reiterated its arguments made before the AO in light of the decision of the ITAT in the assessee's own case in ITA Nos.1864 to 1867/Mds/2015 & CO Nos.125 to 128/Mds/2015 for the

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AYs 2008-09 to 2011-12, where similar cash payments disallowed u/s.40A(3) of the Act, has been deleted by the Tribunal. The Ld.CIT(A) after considering relevant submissions of the assessee and also taken note of decision of ITAT, observed that the assessee has made cash payment in excess of Rs.20,000/- as prescribed u/s.40A(3) of the Act, and further, cash payments made by the assessee are also not covered under any exception as provided u/r.6DD of the Income Tax Rules, 1962. Therefore, sustained the additions made by the AO towards disallowance of cash payment u/s.40A(3) of the Act. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

5. The Ld.AR for the assessee referring to the decision of ITAT, Chennai Benches in the assessee's own case for the AYs 2008-09 to 2011-12 in ITA Nos.1864 to 1867/Mds/2015 & CO Nos.125 to 128/Mds/2015 and also details of cash payments to three parties submitted that cash payment to single party on any day does not exceed the prescribed limit u/s.40A(3) of the Act, although, sum paid to a single person exceeds the prescribed limit. Further, the assessee has explained the reasons for cash payments. He further submitted that an identical issue has been considered by the Tribunal in the assessee's own case for earlier assessment years and after considering relevant facts held that there is a business exigency in making cash payments, and then, cash payments cannot be disallowed u/s.40A(3) of the Act. Therefore, he submitted that the Ld.CIT(A) erred in sustaining additions made by the AO towards cash payments u/s.40A(3) of the Act.

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6. The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that the assessee could not explain how cash payment in excess of prescribed limit comes under exception as provided u/r.6DD of IT Rules, 1962. The Ld.DR further submitted that the assessee is not in dispute with regard to the fact that cash payment in a single day to a person is in excess of Rs.20,000/- as prescribed u/s.40A(3) of the Act. Since, the assessee failed to make out a case of any exception as provided u/r.6DD of IT Rules, 1962, the Ld.CIT(A) has rightly confirmed the addition made towards disallowance of cash payment and their orders should be upheld.

7. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The AO has disallowed cash payments of Rs.8,64,900/- u/s.40A(3) of the Act, on the ground that the cash payments to three parties in a single day is in excess of sum of Rs.20,000/- as prescribed u/s.40A(3) of the Act. It was the explanation of the assessee that each payment to one person does not exceeds the specified limit, however, sum paid in a single day to a person was in excess of Rs.20,000/- as prescribed u/s.40A(3) of the Act. According to the assessee, there is an urgent requirement of cash payments to transporters of bio-mass waste, because, the assessee is procuring bio-mass waste from local persons and requires to pay in cash to the transports for their requirements. We find that as per the observations of the AO & the Ld.CIT(A), the responsibility to make payments to transporters was on the suppliers. In fact, the assessee had also made payments to

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transporters but debited to supplier's account. From the above, it is very clear that primary responsibility to make payment to transporters was on supplier. Therefore, the assessee cannot claim that there was an urgent requirement to make payment in cash considering business exigency. Further, there is no dispute with regard to the fact that sum paid by the assessee in a single day to one person is in excess of prescribed limit provided u/s.40A(3) of the Act. Further, the assessee could not make out a case that the cash payment made to three parties comes under any exception as provided u/r.6DD of Income Tax Rules, 1962. Therefore, we are of the considered view that there is no error in the reasons given by the AO and Ld.CIT(A) to disallow cash payment in excess of prescribed limit u/s.40A(3) of the Act. In so far as, case law relied upon by the assessee in the assessee's own case for earlier assessment years, we find that although, the co-ordinate bench of ITAT Chennai in the assessee's case has considered certain cash payments u/s.40A(3) of the Act, but on perusal of findings of the Tribunal in earlier assessment years, we find that the assessee has paid cash towards transportation cost, such as fuel expenses, driver expenses, etc., which is to be settled then and there in cash. In this case, the AO has brought out clear facts to the effect that there is no obligation on the part of the assessee to make payment towards transportation charges. Further, the assessee itself has accepted the fact that payment of transportation charges was the responsibility of the supplier and in fact, whatever amount paid to three parties has been

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debited to supplier's account. Therefore, we are of the considered view that findings and facts recorded by the Tribunal in earlier assessment year does not apply to the facts of the present case. Hence, it cannot be said that the case of the assessee is covered by the decision of the ITAT for earlier assessment year.

8. In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that there is no error in the reasons given by the Ld.CIT(A) to confirm the addition made towards cash payments u/s.40A(3) of the Act, and thus, we are inclined to uphold the findings of the Ld.CIT(A) and dismiss the appeal filed by the assessee.

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

Order pronounced on the 28th day of February, 2023, in Chennai.

Sd/-

(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 28th February, 2023.

TLN

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

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)

Sd/-

(मंजूनाथा.जी)

(MANJUNATHA.G)

लेखा सदस्य/**ACCOUNTANT MEMBER**

4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF