

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

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.155/Bang/2023
Assessment Year: 2012 – 13

Channakeshava Y.S. (HUF) No.3, 1 <sup>st</sup> Main KHB Colony Gandhinagar Yelahanka Bangalore 560 064  <b>PAN NO : AAAHY3201K</b>	<b>Vs.</b>	Deputy Commissioner of Income-tax Circle 6(3)(1) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri Ravi Shankar, A.R.
<b>Respondent by</b>	:	Shri Sankar Ganesh K., D.R.

<b>Date of Hearing</b>	:	25.04.2023
<b>Date of Pronouncement</b>	:	25.04.2023

**O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

This appeal by assessee is directed against order of NFAC dated 1.2.2023 for the assessment year 2012-13.

2. The assessee HUF being aggrieved by the order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') by the Deputy Commissioner of Income Tax, Circle 6(3)(1), Bangalore dated 27/02/2015 and received by the Assessee on 06/03/2015 prefers this appeal before the

Commissioner of Income Tax [Appeal] - 7, Bangalore. The relevant facts of the case are that:

1. The assessee HUF is engaged in the business of civil construction, garbage contractor, and received rent from house property and also interest income during the year.
2. The Assessee filed its return of income for the AY 2012-13, declaring total income of Rs.23,50,027/- on 04/10/2012 and subsequently the assessee filed revised return and declared Rs.21,76,730/- on 18/11/2012. The assessee's case was selected for scrutiny and statutory notices were issued and details were called for. The assessee filed the necessary documents and details as sought by the learned assessing officer.
3. The learned Assessing Officer concluded the assessment of the assessee by passing an order under section 143(3) of the Act dated 06/02/2015 as follows:

A	Income returned by the Assessee		21,76,730
B	I Add: Labour charges paid (civil construction) disallowed U/s 40(a)(ia)	44,30,650	
C	Add: Vehicle hire charges disallowed under section 40(a)(ia)	44,49,000	
D	Add: Labour charges - Garbage disallowed U/s 40(a)(ia)	1,28,20,000	
E	Unexplained Cash deposits	46,65,000	

F	Total disallowance (B+C+D+E)	2,63,65,650	
	Assessed income (A+F)		2,85,41,980

2.1 Against this assessee went in appeal before NFAC. Before NFAC assessee submitted partywise payments to sub contractor as follows:

Sl. No	Particulars	PAN No.	Labour Charges Civil	Vehicle Hire Charges	Labour Charges Garbage	Total Amount
1	VenkateGowda G.	APFPG0216E	2,015,000	-	-	2,015,000
2	Narendra Kumar Y.S.	ADJPN1532E	325,000			325,000
3	Y.B.Krishnamurthy	AKTPK6322N	375,000	-	90,000	465,000
4	Y.A.Dhanashekar	AJDPD2290H	180,650	-	8,160,000	8,340,650
5	Y.G.Manjunath	ATAPM7275N	700,000		-	700,000
6	G.S.Somashekar	BSJPS4995L		-	1,090,000	1,090,000
7	Gokul N	E'FV°G3731B	-	3,000,000	-	3,000,000
8	Y.S.SureshBabu	BLMPS1025D	525,000	-		525,000
9	Y.N.Ranganath	APTPR8809N	30,000	1,099,000	-	1,129,000
10	Ashok H.C.	BWDPA8637F		-	920,000	920,000
11	H.S.Ramesh Kumar	ABNPR5039E	-		860,000	860,000
12	K. Raghavendra	ASYPR1072K			750,000	750,000

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13	V. Chandrashekar	ACQPC5558B			200,000	200,000
14	Dhannaram		200,000		-	200,000
15	AVR Enterprises	ABNPR4995H			200,000	200,000
	TOTAL		4,350,650	4,099,000	12,270,000	20,719,650

2.2 The NFAC observed that the assessee has made payment worth Rs. 43,50,650/- to eight sub-contractors as against the claim of Rs. 44,30,650/-. Out of this payment to Mr. Y. S. Suresh Babu is cash payment in excess of Rs. 20,000/- as discovered by the Assessing Officer in his remand report dated 4.5.2019. NFAC further observed that except payment to Mr. Ranganath of Rs. 30,000/-, all payments are made in excess of the prescribed limit of Rs. 30,000/- in section 194C(5) of the Income-tax Act, 1961 ['the Act' for short]. Further, it is an admitted position that the payments were made by the assessee to these labour supervisors / contractors through single cheques and the payment was made by these middlemen to the labourers. Thus, the labourers were neither on the wage role of the assessee nor any direct payment was made to them by the assessee. NFAC further noted that written agreement is not a mandatory requirement u/s. 194C of the Act. In view of these facts, payment of Rs. 30,000/- through contractor Mr. Y.N. Ranganath is allowed. The difference between claim of Rs. 44,30,650/- and evidenced payment of Rs 43,50,650/- i.e. Rs. 80,000/- is disallowed. The payment made in cash to Mr. Y. S. Suresh Babu i.e. Rs. 5,25,000/- is disallowed. On balance payment disallowance by Assessing Officer u/s. 40A(ia) of the

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Act is sustained. The Assessing Officer was directed by the NFAC accordingly.

2.3 Further NFAC observed that the assessee has claimed payment of Rs. 1,28,20,000/- as labour charges on garbage collection which has been disallowed by the Assessing Officer u/s. 40A(ia) for want of TDS. From the Table-1 above, it is seen that labour charges for collection of garbage has been paid to eight contractors. All these payments are above the limit prescribed in section 194C(5) of Rs. 30,000/-. Total payment evidenced here is Rs. 1,22,70,000/- as against the claimed expenditure of Rs. 1,28,20,000/-. This difference amount of Rs. 5,50,000/- is disallowed. The balance amount is to be disallowed u/s. 40A(ia) of the Act for the reasons that these payments are not made directly to the labourors and that the labourors are not on the wage role of the appellant and that the payments are made through contractors through single cheques who in turn have made payments to the labourors and thus constituting a contractual relationship between the appellant and supervisor / contractor. Assessing Officer's action was, therefore, sustained by the NFAC and he directed the Assessing Officer to give effect accordingly.

2.4 Further, the NFAC observed that the Assessing Officer had disallowed Rs. 44,49,000/- u/s. 40A(ia) of the Act in respect of transport charges. From the Table submitted by the assessee and placed as above, NFAC observed that amount of Rs. 40,99,000/- only has been paid to contractors. The difference of Rs. 3,50,000/- is to be disallowed for want of evidence. The payments are above the prescribed limit of Section 194C(5) of the Act.

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Admittedly these are payments to contractors through single cheques for onward payment, hence they constitute contractual relationship for the assessee. The balance amount was disallowed u/s. 40A(ia) of the Act by the NFAC with direction to the Assessing Officer to give effect accordingly.

2.5 Further, the NFAC observed that the Assessing Officer has made addition of Rs. 46,65,000/- for non-explaining the source of cash deposited by the assessee. The assessee has explained the cash deposited in its bank of account as cash in hand of the assessee. The assessee submitted before NFAC that the Assessing Officer has only looked into cash deposits and not looked into cash withdrawals and that the cash deposit was wholly out of the cash withdrawal and business receipts. The assessee has also submitted that at best additions could have been made of peak credit, if any. This addition was made by the Assessing Officer because of non-availability of information and explanation before him. In the remand report there is no light thrown on this issue. Therefore, NFAC directed the Assessing Officer to verify the cash ledger and bank statement of the assessee and restrict the addition to the extent of unexplained cash only.

3. Against this assessee is in appeal before by way of following grounds:-

**3. Grounds on disallowance of Labour charges on civil constructions Rs.44,30,650/-:**

- a. *The learned CIT(A) is not justified in confirming the disallowance of the sum of Rs. 80,000/- on the facts and circumstances of the case.*
- b. *The learned CIT(A) has erred in disallowing a sum of Rs.5,25,000/- paid to Mr. Suresh Babu on account of cash payments without appreciating the fact that the payment was made to Suresh Babu as a*

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*supervisor with a direction to disburse the amount to temporary labourers whose individual payment per day did not exceed threshold limit as envisaged under section 40A(3) of the Act, on the facts and circumstances of the case.*

- c. The authorities below were not justified in disallowing the balance expenditure incurred towards labour charges for civil construction in the ordinary course of business, Rs.38,25,60/- under section 40(a)(ia) of the Act on the facts and circumstances of the case.*

**4. Grounds on disallowance of Labour charges for garbage collection Rs.1,28,20,000/-:**

- a. The 'earned CIT(A) was not justified in disallowing the expenditure incurred towards labour charges for garbage collection in the ordinary course of business, to the extent of Rs.5,50,000/- on the facts and circumstances of the case.*
- b. The authorities below were not justified in disallowing the balance expenditure incurred towards labour charges for garbage collection in the ordinary course of business, Rs.1,22,70,000/- under section 40(a)(ia) of the Act on the facts and circumstances of the case.*

**5. Grounds on disallowance of transport charges Rs.44,49,000/-:**

- a. The learned CIT(A) was not justified in disallowing a sum of Rs.3,50,000/- on the facts and circumstances of the case.*
- b. The authorities below are not justified in disallowing the balance expenditure incurred towards transportation charges in the ordinary course of business, Rs.40,99,000/- under section 40(a)(ia) of the Act on the facts and circumstances of the case.*

4. The assessee has filed additional evidences along with petition for admission of additional evidences as follows:-

- 1. The appellant humbly submits the following for the kind consideration and favourable order by the Hon'ble Commissioner of Income-tax (Appeals).*
- 2. With reference to the Rule 46A of the Income-Tax Rules, 1962, the appellant wishes to submit before your Honour the additional evidences which are in respect of the From 26A of the following assessee to who the appellant has paid amounts in the regular course of business, and is being annexed to this application of additional evidence in support of the case of the appellant;*

3. *The additional evidence consists of return of income, computation of income and the Form 26A duly certified by a Chartered Accountant, in respect of the disallowances made towards payments for labour charges, vehicle hire charges and labour charges.*

Si no.	Particulars	PAN	Amount
1	Venkate Gowda .G	APFPG0216E	20,15,000
2	Narendra Kumar .Y. S	ADJPN1532E	3,25,000
3	Y. B. Krislunmurthy	AKTPK6322N	4,65,000
4	Y. A. Dhanashekar	AJDPD2290H	83,40,650
5	Y. G. Manjunath	ATAPM7275N	7,00,000
6	G. S. Somashekar	BSJPS4995L	10,90,000
7	Gokul .N	BFVPG3731B	30,00,000
<b>TOTAL</b>			<b>1,59,35,650</b>
8	Y. S. Suresh Babu	BLMPS1025D	5,25,000
9	Y.N. Ranganath	APTPR8809N	11,29,000
10	Ashok H.C.	BWDPA8637F	9,20,000
11	H.S. Ramesh Kumar	ABNPR5039E	8,60,000
12	K. Raghavendra	ASYPR1072K	7,50,000
	<b>TOTAL</b>		<b>41,84,000</b>
13	V. Chandrashekar	ACQPC5558B	2,00,000
14	Dhannaram		2,00,000
15	AVR Enterprises	ABNPR4995H	2,00,000
	<b>GRAND TOTAL</b>		<b>2,07,19,650</b>

- A. *The appellant is herewith enclosing the return of income, computation of income, copy of PAN, address proof and FORM 26A in respect of assessee appearing at serial number one to seven, totalling Rs.1,59,35,650/- in the chart above in respect of recipients of disbursements of the appellant.*
- B. *The appellant is herewith enclosing the confirmation of account, PAN, address proof etc in respect of assessee appearing at serial number eight to twelve, totalling Rs. 41,84,000/- represents assessee who have not filed their return of income since falling below taxable limits.*
- C. *The appellant is herewith stating the PAN of the parties reflecting at serial number thirteen and fifteen of the chart above, whose income is falling below taxable limits.*
4. *With respect of the documents at serial A, above and annexed to this application for admitting additional evidence, the same is required to demonstrate that the recipients of the amounts have considered the*

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*payments in their return of income and are accompanied by a certificate issued by an Accountant.*

5. *With respect of the documents at serial B, above and annexed to this application for admitting additional evidence, the same is required to demonstrate that the recipients of the amounts have incomes below the taxable limits and the computation of incomes, the PAN and address proof, demonstrate that the assesses are genuine recipients of the payments made by the appellant and the disallowance was not called for.*
6. *The appellant wishes to submit that the additional evidences produced by the appellant as mentioned above are in support of valid claims made by the appellant, for your Honour's kind consideration in a detailed manner in the written submission filed separately.*
7. *The evidences in A to B, as mentioned above are produced afresh before your Honour, which was collected subsequent to the passing of the order of assessment and not available on the file of the appellant and hence placed before your Honour for the first time.*
8. *The reasons stated above for failure to produce the records at the time of assessment proceedings was due to reasonable cause and the same could not be collated at short notice and hence was not intentional, while participating in the scrutiny proceedings.*
9. *The appellant prays your Honour to kindly admit these additional evidences produced before your Honour under Rule 46A of the Income-tax Rules, 1962 in support of the claim of the appellant in adjudicating the appeal for the advancement of substantial cause of justice.*
10. *The appellant also places reliance on the Hon'ble Apex Court decision in K. Venkataramiah V. A. Seetharama Reddy AIR 1963 SC 1526 interpreting the words "any other substantial cause", it was held: "There may well cases where even though the court finds that it is able to pronounce judgment on the state of record as it is, and so, it cannot strictly say that it requires additional evidence 'to enable it to pronounce judgment', it still considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce its judgment in a more satisfactory manner. Such a case will be one for allowing additional evidence." The above judgment was followed in ITO v. B N Bhattacharya, 112 11R 423 (Cal).*

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11. *The appellant once again humbly requests your Honour to kindly consider the aforesaid additional evidences filed by the appellant in the 'interest of equity & justice.'*

5. The ld. D.R. opposed the admission of additional evidences.

6. We have heard the rival submissions and perused the materials available on record. With regard to admission of additional evidences, the assessee has explained that out of the above additional evidences marked as A & B was collected subsequent to the passing of assessment orders which were not available with the assessee on earlier occasion and also assessee has been having very short time to produce certain evidences before the lower authorities and prayed that these additional evidences may be admitted in the interest of justice. In our opinion, there is a good and sufficient reason for not producing these additional evidences on earlier occasion before lower authorities. Accordingly, in the interest of justice, we admit these additional evidences. After admitting these additional evidences, we are of the opinion that these additional evidences are required to be examined at the end of the AO. Accordingly, we remit the entire issue in dispute to the file of AO for fresh consideration after being heard the assessee.

7. In the result, the assessee's appeal is partly allowed for statistical purposes.

Order pronounced in the open court on 25<sup>th</sup> Apr, 2023

**Sd/-**  
**(Beena Pillai)**  
**Judicial Member**

**Sd/-**  
**(Chandra Poojari)**  
**Accountant Member**

Bangalore,  
Dated 25<sup>th</sup> Apr, 2023.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(Judicial)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,  
ITAT, Bangalore.**