

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 106/RPR/2021
निर्धारण वर्ष / Assessment Year : 2018-19

Harshdeep Singh Juneja
21/537, Katora Talab Road,
Raipur (C.G.)-492 001
PAN : ACUPJ6153B

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Circle-1(1), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : S/Shri Praveen Khandelwal &
Praveen Goyal, CAs
Revenue by : Shri Piyush Tripathi, Sr. DR

सुनवाई की तारीख / Date of Hearing : 21.04.2023

घोषणा की तारीख / Date of Pronouncement : 29.05.2023

आदेश / ORDER

PER RAVISH SOOD, JM:

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 05.11.2021, which in turn arises from the intimation issued by the A.O/Centralized Processing Center (CPC) under Sec.143(1) of the Income-tax Act, 1961 (in short 'the Act') dated 26.08.2019 for the assessment year 2018-19. The assessee has assailed the impugned order on the following grounds of appeal before us:

“1. That on the facts and in the circumstances of the case and in law, the CIT(A) erred in sustaining disallowances made u/s.40A(3) of the Act of Rs.57,69,920/-.

2. That on the facts and circumstances of the case and in law, the CIT(A) erred in applying the decision of Hon'ble ITAT Panji Bench in the case of Prathamik Krishi Pattinsahkari Bank Ltd vs Income Tax Officer, ward 1(3), Belgaum 55 taxmann.com 412, even though the facts of the case are distinguishable.

3. That on the facts and circumstances of the case and in law, the CIT(A) erred in not following the decision of Hon'ble Kolkata Tribunal in the case of M/s Bolkunda Packwai & (S) C vs ITO, Ward 1(1), Asansol (ITA No. 462-463/Kol/2016), where the facts of the case are similar to the case of the appellant.

4. The appellant craves to add, alter or delete any of the grounds of appeal during course of appellate proceedings.”

2. Succinctly stated, the assessee is an individual holding FL-2 license on behalf of his partnership firm viz. Juneja Ventures, which is engaged in the business of running a restaurant under the name and style of “Mocha

Restaurant” at VIP Road, Raipur. The assessee had filed his return of income for A.Y.2018-19 on 13.10.2018, declaring an income of Rs.7,22,540/-.

3. Income of the assessee was processed by the CPC, Bengaluru u/s.143(1) of the Act dated 26.08.2019, wherein after making a disallowance of Rs.57,62,920/- u/s.40A(3) of the Act its income was determined at Rs.64,85,460/-.

4. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without success.

5. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

6. We have heard the Ld. Authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

7. Controversy involved in the present appeal lies in a narrow compass, i.e. sustainability of the disallowance of Rs.56,62,920/- made by the CPC, Bengaluru u/s.40A(3) of the Act. As is discernable from the records, the auditor of the assessee at Sr.No.21(d) of his audit report filed in Form 3CD,

had reported that the assessee had incurred expenses of Rs.57,62,920/- towards purchases made from the State Government of Chhattisgarh in a manner otherwise than that contemplated u/s.40A(3) of the Act. For the sake of clarity, the qualification by the auditor is being culled out as under:

21	a	Please furnish the details of amounts debited to the profit and loss account, being in the nature of capital, personal, advertisement expenditure etc.
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(d) Disallowance/deemed income under section 40A(3)						
	(A) On the basis of the examination of books of account and other relevant documents/evidence, whether the expenditure covered under section 40A(3) read with rule 6DD were made by the account payee cheque drawn on a bank or account payee bank draft. If not, please furnish the details					No.
	Date of payment	Nature of payment	Amount in Rs.	Name of the payee	Permanent Account Number of the payee, if available	
	31/03/2018	Purchase	57,62,920	Chhattisgarh State Government		
	(B) On the basis of the examination of books of account and other relevant documents/ evidence, whether the payment referred to in section 40A(3A) read with rule 6DD were made by the account payee cheque drawn on a bank or account payee bank draft, if not, please furnish the details of amount deemed to be the profits and gains of business or profession under section 40A(3A).					

The CPC, Bengaluru while processing the returned income of the assessee in the backdrop of the aforesaid qualification by the auditor, i.e. payment

made by the assessee in a manner other than that prescribed u/s. 40A(3) of the Act, therein, vide its letter dated 21.01.2019 communicated to the assessee a proposed disallowance of the aforesaid amount of Rs.57,62,920/- (supra), and called upon it to show cause within a period of 30 days as to why said adjustment may not be carried out. For the sake of clarity, the relevant extract of the aforesaid communication dated 21.01.2019 issued by the CPC, Bengaluru a/w. "annexure" is culled out as under:

आयकर केन्द्र CENTRALIZED PROCESSING CENTER INCOME TAX DEPARTMENT	
Bengaluru-560500	
Telephone: 18001034455 (Toll Free) or 080-46605200	
बैंगलूर ५६०५००	
फ़ोन: १८००१०३४४५५ (टॉलफ्री) ०८० ४६६०५२००	
Name and Address HARSHDEEP SINGH JUNEJA 21/537, NEAR SAGGAR NURSING HOME, KATOGRA TALAB ROAD, CIVIL LINES, RAIPUR CHHATISHGARH 492001	नाम और पता हर्षदीप सिंह जुनेजा २१/५३७, सागर नर्सिंग होम के निचले, कटोगरा तालाब रोड, सिविल लाईन्स, रायपुर छत्तीसगढ़ ४९२००१
Communication Reference No. CPC/1819/G22/1880099553	Date of Communication: 21-01-2019
ITR Form Type आई टी आर प्रकार: 3	Assessment Year निर्धारण वर्ष: 2018-19
PAN ACUPJ6153B	

Dear Sir/Madam,

Subject: Communication of proposed adjustment u/s 143(1)(a) of Income Tax Act, 1961.

The return for PAN ACUPJ6153B, Assessment Year 2018-19 E-filing- Acknowledgement number 334587351131018 Dated 13-OCT-18 contains errors/incorrect claims/ inconsistencies which attract adjustment(s), as specified u/s. 143(1)(a) of Income Tax Act, 1961, as annexed in Part-A [(i) to (v), as applicable].

You are herewith afforded an opportunity to respond to the proposed adjustment(s) u/s. 143(1)(a), mentioned below, within a period of 30 days (thirty days) from the date of issue of this communication. Please provide the required information or file a revised return, as applicable, through online mode. To submit response, kindly log on to www.incometaxindiaefiling.gov.in with your "user name and password" and choose "e-Assessment/Proceeding" under the "e-proceeding" section.

Kindly note:

1. Revised return uploaded as above should have all the data to enable processing. It should contain complete information as furnished in the earlier return along with information pertaining to the errors/incorrect claims/ inconsistencies listed below.
2. You are advised to use the software utility available on the website www.incometaxindiaefiling.gov.in to avoid errors.
3. The online response to this communication will be presumed to be duly verified, correct and complete in accordance with the provisions of the Act.
4. **The response so received shall be considered before making any adjustment. In case, no response is received within 30 days (thirty days) of issue of this intimation, the return of income will be processed after making necessary adjustment(s) u/s 143(1)(a) of Income Tax Act, 1961 without providing any further opportunities in this matter.**

Digital Signature of AMRIT RAJ SINGH
 Date: 2019/01/21 11:35
 Reason: DIGITALLY SIGNED
 Location: BANGALORE - CY

AMRIT RAJ SINGH
 Deputy Commissioner of Income Tax,
 CPC, Bengaluru

This communication is computer generated and may not contain signature. Where sent by email, this is signed with the digital signature of the Income Tax Department - CPC, which is obtained from a certifying authority under the Information Technology Act, 2008. For any queries, please quote the PAN, Communication Reference Number and call on the telephone number provided above.



18202401344000

Please ignore this notice if you have already filed a revised return in response to the earlier communication.

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Part - A
Adjustments u/s 143(1)(a)

Incorrect Claim u/s 143(1)(a)(ii)						
(ii)	Sl.No	Schedule	Error Description	Amount in Income Tax Return	Amount as computed	Variance on account of Proposed adjustment
	1	Schedule BP	In Schedule BP, Sl.No.17. Amounts debited to the profit and loss account, to the extent disallowable under section 40A(9f of Part-OI) is not consistent with amount shown in Sl.No.9.f. Total amount disallowable under section 40A (total of 9a to 9e) in schedule OI.	0	5762920	5762920
	2	SCHEDULE OI	In Schedule Part A-OI, Sl.No.9.f. Total amount disallowable under section 40A (total of 9a to 9e) and sum of Sl.no.9a to Sl.No.9e are inconsistent.	0	5762920	5762920
Disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return-143(1)(a)(iv)						
(iv)	Sl.No	Particulars	Amount in Income Tax Return	Amount mentioned in Form Annexure 3CD	Proposed adjustment to total income	
	1	Inconsistency in Amount in excess of twenty thousand rupees paid to a person in a day otherwise than by account payee cheque/accunt payee bank draft under section 40A(3)	0	5762920	5762920	

On a perusal of the aforesaid communication of the CPC, Bengaluru, it transpires that the assessee was specifically allowed a time period of 30 days to respond to the aforesaid proposed adjustment u/s. 143(1)(a) of the Act. In fact, it was specifically stated at Note-4 that the response of the assessee if received within stipulated time period would be considered before making any adjustment.

8. In response to the aforesaid communication received from CPC, Bengaluru dated 21.01.2019, the assessee vide its rely uploaded on

24.01.2019 (18:57:41) objected to the aforesaid proposed adjustment. It was categorically stated by the assessee that as the expenditure incurred was towards purchase of beer from shops run by the State Government of Chhattisgarh, which did not receive payment in any mode other than cash, therefore, the payment towards purchases consideration were made in cash. For the sake of clarity, the objections/disagreement of the assessee to the proposed adjustment, i.e. disallowance u/s.40A(3) of the Act of Rs.57,62,920/- by the CPC is culled out as under:

Incorrect Claim- u/s 143(1)(a)(ii)					
Sl. No.	Schedule	Error Description	Amount in Income Tax Return	Amount as computed	Response
1	Schedule BP	In Schedule BP, Sl.No.17, Amounts debited to the profit and loss account, to the extent disallowable under section 40A(9f of Part-OI) is not consistent with amount shown in Sl.No.9.f. Total amount disallowable under section 40A (total of 9a to 9e) in schedule OI.	0	5762920	The assessee being licensed holder on behalf of his firm Juneja Ventures has purchased beer from shops run by the State Government undertaking which does not accept payment in any other mode other than cash. The vendor is State Government undertaking who does not supply the beer to the licensed holder unless paid in cash. The auditor in the tax audit report has clearly mentioned this fact at sub clause (A) of clause (d) of point 21 of Tax Audit Report attached with Balance sheet and Profit and Loss Account while filing Form 3CB 3CD.
2	SCHEDULE OI	In Schedule Part A-OI, Sl.No.9.f. Total amount disallowable under section 40A (total of 9a to 9e) and sum of Sl.no.9a to Sl.No.9e are inconsistent.	0	5762920	The assessee being licensed holder on behalf of his firm Juneja Ventures has purchased beer from shops run by the State Government undertaking which does not accept payment in any other mode other than cash. The vendor is State Government undertaking who does not supply the beer to the licensed holder unless paid in cash. The auditor in the tax audit report has clearly mentioned this fact at sub clause (A) of clause (d) of point 21 of Tax Audit Report attached with Balance sheet and Profit and Loss Account while filing Form 3CB 3CD.
Disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the Income Tax Return - u/s 143(1)(a)(iv)					
Sl. No.	Particulars	Amount mentioned in the Income Tax Return	Amount mentioned in Form Annexure 3CD	Response	
1	Inconsistency in Amount in excess of twenty thousand rupees paid to a person in a day otherwise than by account payee cheque/account payee bank draft under section 40A(3) Sec 40A	0	5762920	The assessee being licensed holder on behalf of his firm Juneja Ventures has purchased beer from shops run by the State Government undertaking which does not accept payment in any other mode other than cash. The vendor is State Government undertaking who does not supply the beer to the licensed holder unless paid in cash. The auditor in the tax audit report has clearly mentioned this fact at sub clause (A) of clause (d) of point 21 of Tax Audit Report attached with Balance sheet and Profit and Loss Account while filing Form 3CB 3CD.	
Response		Disagreed			
<input type="button" value="Back"/>					

Although the assessee had responded to the proposed adjustment within the stipulated time period, and had disagreed/objected to the adjustment/disallowance as was sought to be made u/s.40A(3) of the Act, the CPC, Bengaluru without considering the same, had thereafter, issued an intimation u/s.143(1) of the Act dated 26.08.2019, wherein the disallowance u/s.40A(3) of the Act of Rs.57,62,920/- was made.

9. The Ld. Authorized Representative (for short 'AR') for the assessee has assailed the intimation issued by the CPC, Bengaluru u/s.143(1) of the Act dated 26.08.2019, inter alia, for the reason that the same had been passed without considering the response of the assessee to the proposed adjustment that was filed on 24.01.2019 (18:57:41), i.e. well within the stipulated time period of 30 days from the date of receipt of the communication. It was averred by the Ld. AR, that the very purpose of affording an opportunity to the assessee as per the mandate of "2nd proviso" to Section 143(1) (a) of the Act would be rendered as redundant and otiose in case the response filed by an assessee was not to be considered. Our attention was drawn by the Ld. AR to the "2nd proviso" to Section 143(1)(a) of the Act, wherein the same specifically provides that the response received from the assessee to the proposed adjustment to his returned income was mandatorily to be considered before proceeding any further and making any such adjustment. It was, thus, the claim of the Ld.

AR that the adjustment made by the CPC, Bengaluru vide its intimation u/s.143(1)(a) dated 26.08.2019 being clearly in flagrant violation of the mandate of law, thus, could not be sustained and was liable to be struck down on the said count itself.

10. The Ld. Departmental Representative (for short 'DR') relied on the orders of the lower authorities. It was submitted by him that as the assessee's auditor had clearly qualified in his audit report that the assessee had incurred an expenditure of Rs.57,62,920/- in violation of the provisions of Section 40A(3) of the Act, therefore, the CPC, Bengaluru had rightly disallowed the amount and made a consequential adjustment in the hands of the assessee u/s.143(1)(a) of the Act. However, the Ld. DR on being confronted with the fact that the response filed by the assessee, wherein he had categorically objected a/w. reasons to the proposed adjustment had been summarily brushed aside by the CPC, Bengaluru, which had proceeded with and disallowed the aforesaid amount vide its intimation u/s.143(1) dated 26.08.2019, could not rebut the same.

11. We have given a thoughtful consideration to the issue involved in the present appeal, and find substance in the claim of the Ld. AR that the adjustment made by the CPC, Bengaluru vide its intimation u/s.143(1) of the Act dated 26.08.2019 is not strictly as per the mandate of law. Before

proceeding any further, we deem it fit to cull out the provisions of Section 143(1)(a) of the Act, which reads as under:

“143. (1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:—

(a) the total income or loss shall be computed after making the following adjustments, namely:—

(i) any arithmetical error in the return [***];

(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;

(iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;

(iv) disallowance of expenditure [or increase in income] indicated in the audit report but not taken into account in computing the total income in the return;

(v) disallowance of deduction claimed under [sections 10AA, or under any of the provisions of Chapter VI-A under the heading “C-Deductions in respect of certain incomes”, if] the return is furnished beyond the due date specified under sub-section (1) of section 139; or

(vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

Provided that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:

Provided further that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made:

Provided also that no adjustment shall be made under sub-clause (vi) in relation to a return furnished for the assessment year commencing on or after the 1st day of April, 2018;”

Admittedly, it is a matter of fact borne from record that the assessee’s auditor at Sr. No.21(d) of his audit report filed in Form 3CD r.w.s. 6G(2), had reported that payment of expenditure of Rs.57,62,920/- u/s.40A(3) r.w.r. 6DD towards certain purchases made from the State Government of

Chhattisgarh were made in a manner otherwise than vide account payee cheque or an account payee draft. On a perusal of the record, it transpires that the CPC, Bengaluru vide its letter dated 21.01.2019 had called upon the assessee to show cause as to why disallowance of Rs.57,62,920/- may not be made in his hands u/s.40A(3) of the Act. On a perusal of the aforesaid letter, we find that the same as per the mandate of the "2nd Proviso" to Section 143(1)(a) of the Act had allowed a time period of 30 days to the assessee to file his objection to the proposed adjustment. As observed by us hereinabove, the assessee on being intimated about the aforesaid proposed adjustment that was sought to be made in his hands, i.e. disallowance u/s.40A(3) of the Act of Rs.57,62,920/-, had therein responded to the same and objected to the said disallowance. It was claim of the assessee that as the aforesaid payments were made towards purchase of liquor from the State Government undertaking which did not receive payment in any mode other than cash, therefore, no disallowance u/s.40A(3) of the Act with respect to the payment in question was called for in his hands. We find on a careful perusal of the reply filed by the assessee that he had impliedly tried to bring his case within the realm of Rule 6DD(b) of the Income Tax Rules, 1962, i.e. an exception carved out to the applicability of the provisions of Section 40A(3) of the Act. For the sake of clarity, Rule 6DD(b) is culled out as under:

“6DD. No disallowance under sub-section (3) of section 40A shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-section (3A) of section 40A where a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees in the cases and circumstances specified hereunder, namely :

(a).....

(b) where the payment is made to the Government and, under the rules framed by it, such payment is required to be made in legal tender;

(c)

12. On a careful perusal of the aforesaid Rule 6DD(b), it transpires that the same provides an exception to the applicability of Section 40A(3) of the Act, in a case where the payment is made to the government under the rules framed by it and such payment is required to be made in legal tender. Ostensibly, the assessee in his objection dated 24.01.2019 to the proposed adjustment that was sought to be made by the CPC, Bengaluru u/s.40A(3) of the Act, had clearly stated that the expenditure in question was incurred towards purchase of beer from the State Government which would not accept payment in any mode other than cash. To sum up, the assessee in his reply, had clearly demonstrated before the CPC, Bengaluru that the expenditure in question did fall within the realm of the exception carved out under Rule 6DD(b) of the Income Tax Rules, 1962. Be that as it may, in our considered view, now when the assessee had come forth with a specific objection which did clearly fit within the exception provided under Rule 6DD(b), then, it was obligatory on the CPC, Bengaluru to have either

accepted the said explanation ; or in case the same was to be rejected, then provided certain cogent reasons for doing so. In case, the response/objections of the assessee as provided in the “2nd proviso” to Section 143(1)(a) of the Act are taken as an idle formality; or an eye wash, as had been done in the present case before us, then the said mechanism provided for making an adjustment u/s.143(1)(a) of the Act would be rendered as unworkable. In our considered view, the legislature while enlarging the provisions of Section 143(1)(a) of the Act had set out the aforesaid manner and methodology which is to be ritually followed before making any adjustment. We are unable to persuade ourselves to subscribe to the manner in which the objections/response filed by the assessee to the proposed adjustment had been brushed aside; or in fact dispensed with by the CPC, Bengaluru, which as observed by us hereinabove, had rendered the entire mechanism provided u/s.143(1)(a) of the Act as redundant and otiose. As we cannot remain a mere spectator of the aforesaid whimsical exercise carried out by the CPC, Bengaluru which violates the clear mandate of Section 143(1)(a) of the Act, therefore, in all fairness in order to safeguard an assessee from being saddled with a tax liability which is not as per the mandate of law; and at the same time prevent leakage of any revenue to which the Government exchequer would be duly entitled for, restore the issue to the file of the A.O for afresh adjudication. The A.O shall in the course of set-aside proceedings, as per

the mandate of “2nd Proviso” to Section 143(1)(a) of the Act consider the claim that was raised by the assessee vide its objection/response that was uploaded by him on 24.01.2019 (18:57:41) to the proposed adjustment that was intimated by the CPC, Bengaluru vide communication dated 21.01.2019, wherein he had claimed that no disallowance u/s.40A(3) of the payment of Rs.57,62,920/- made by him towards purchase of beer from State Government of Chhattisgarh was called for in his hands. We, thus, on the basis of our aforesaid observations set-aside the order of the CIT(Appeals) and restore the matter to the file of the A.O. Needless to say, the A.O shall in the course of set-aside proceedings afford a reasonable opportunity of being heard to the assessee.

13. As we have set-aside the matter to the file of the A.O, therefore, we refrain from adverting to the other contentions advanced by the Ld. AR on the basis of which he had objected to the sustainability of the adjustment made by the CPC/A.O u/s. 143(1)(a) of the Act which thus, are left open.

14. In the result, appeal of the assessee is allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in open court on 29th day of May, 2023.

Sd/-

ARUN KHODPIA
(ACCOUNTANT MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 29th May, 2023

Sd/-

RAVISH SOOD
(JUDICIAL MEMBER)

SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G.)
4. The Pr. CIT, Raipur-1 (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.