

आयकर अपीलीय अधिकरण, 'ए' (एस एम सी) न्यायपीठ,चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' (SMC) BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT

आयकर अपील सं./ITA Nos.: **117, 118, 119, 120, 121 &
122/CHNY/2023**

निर्धारण वर्ष/Assessment Years: 2012-13, 2013-14, 2014-15, 2015-16,
2016-17 & 2017-18

M/s. M. Shyamalanathan & Co.,
12, Sandaipet Vaniga Valagam
Shevapet,
Salem - 636 002.

The Income Tax Officer,
Vs. Ward 1(2),
Salem.

PAN: AACFM 1410G

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri S. Sridhar, Advocate
: Shri G. Johnson, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 13.06.2023
घोषणा की तारीख/Date of Pronouncement : 16.06.2023

आदेश /ORDER

These six appeals by the assessee are arising out of the common order of the Commissioner of Income Tax (Appeals)-19, Chennai in ITA No.993/21-22,132,133,134,135,136/20-21 dated 16.01.2023. The assessments were framed by the Income Tax Officer, Ward 1(2), Salem dated 26.12.2019 for the assessment year 2012-13 u/s.144 r.w.s.147 of the Income Tax Act, 1961 (hereinafter the 'Act') and by the ACIT, Central Circle, Salem for the assessment

years 2013-14 to 2017-18 vide orders dated 09.02.2021 / 10.02.2021 u/s.143(3) r.w.s. 147 of the Act.

2. The facts and circumstances in all these six appeals of assessee are exactly identical, even the grounds raised are also identical and hence, I will take the facts from lead year i.e., 2012-13 in **ITA No.117/CHNY/2023** and will decide the issue.

3. The first issue in these two appeals i.e., **ITA Nos.117 & 118/CHNY/2023** is as regards to reopening of assessment. The ld.counsel for the assessee despite a query from Bench, has not argued the issue of reopening and hence, the same is dismissed as 'not-pressed'.

4. Coming to issue on merits, the only issue on merits is as regards to the order of CIT(A) confirming the disallowance made by AO on account of disallowance of expenses made in cash in excess of Rs.20,000/- by invoking the provisions of section 40A(3) of the Act. For this, assessee has raised Ground Nos.6 to 12, which are argumentative and factual, hence need not be reproduced.

5. Brief facts are that the assessee is a firm engaged in the business of trading of rice and following mercantile system of

accounting. For the relevant assessment year 2012-13, the assessee filed its return of income on 08.09.2012 and subsequently a survey u/s.133A of the Act was conducted on the business premises of the assessee on 04.03.2019. During the course of assessment proceedings the assessee produced books of accounts, furnished teleprinted copy of books of accounts and purchase bills for the financial year 2011-12 relevant to this assessment year 2012-13. The AO noticed from the purchase bills and printed copy of purchase ledger accounts of rice, that the assessee firm has made payment in cash exceeding Rs.20,000/- for purchase of rice to one person in a day. The AO has tabulated the entire cash payment in excess of Rs.20,000/- and therefore he computed the total payments in cash in excess of Rs.20,000/- to a single person in a single day aggregating to Rs.34,76,920/-. The AO noted that these payments for purchase of rice is in excess of Rs.20,000/- to a single person in a single day in violation of provisions of section 40A(3) of the Act and assessee does not fall under any of the exempted categories as per Rule 6DD of the Income Tax Rules, 1962 and hence, he disallowed the cash payments made in excess of Rs.20,000/- by invoking the provisions of section 40A(3) of the Act at Rs.34,76,920/-. Aggrieved, assessee preferred appeal before CIT(A).

6. The CIT(A) noted that the assessee is a contractor and has purchased rice from rice mills who are the processor and not from the grower/purchaser/cultivator therefore, it is does not fall under any of the exceptions covered under Rule 6DD of the Rules. For this, he observed in para 6.3.8 & 6.3.9 as under:-

6.3.8 From the above observation made by the AO it is very clear that the Appellant as a trader has purchased the rice from the rice mill who are the processor and not from the growers/producers/cultivators. Moreover, the AO has observed that the payment made to middlemen are not covered for the exceptions. Apparently the Appellant has purchased the rice from the mill who are nothing but the middlemen. In view of the specific observation made by the AO, it is respectfully considered that the decision of the Kerala High Court and the Apex Court rendered in the case of Keerthi Agro Mills (P.) Ltd. will not apply to the facts and circumstance of the Appellant case.

6.3.9 The Appellant further relied upon the Circular No. 27/2017 dated 03.11.2017 regarding the applicability of provision of section 40A(3) to cash sale of agricultural produce by cultivators/agriculturalist to traders. It may be appreciated the circular is applicable only to the traders who are purchasing the agriculture produce from the cuitivators/agriculturist. In the Appellant case the Appellant has purchased the rice from the rice mill owner who are the processor/middlemen. The Applicability of the Circular No. 27/2017 will not apply to the Appellant's case.

6.1 As regards to the plea of the assessee that the assessee is an agent and will fall under exception as carved out in the Rule 6DD, the CIT(A) rejected the assessee's claim vide para 6.3.12 as under:-

6.3.12 The Appellant further relied upon the decision of the High Court of Rajasthan in the case of Smt. Harshila Chordia V. ITO as reported in [2008] 298 ITR 349 (Rajasthan), In this case the assessee was an agent collected consideration for the sale price of scooter/mopeds from the customer from place and remitted to the principal agent at another place.

To facilitate this transaction the assessee remitted received cash from the customer to the bank account of the principal agent and in turn the principal agent at another place has withdrawn the cash from his account by way of cheque. This transaction effected for immediate delivery of vehicle to the customer. The Hon'ble High Court has held that this is the business expediency and considered that the disallowance w/s 40A(3) will not apply to the Appellant's case.

6.2 The assessee also argued that the assessee's business is such and due to business expediency it requires consideration that the cash payments are made in excess of Rs.20,000/- for purchase of rice and CIT(A) rejected the assessee's claim vide para 6.3.13 as under:-

6.3.13 In the instant case pending before me, the Appellant has not proved any business expediency that requires to be considered in the light of the exceptions provided under Rule 6DD of the IT Rule. In view of this, the decision relied upon by the Appellant in the case of Smt. Harshila Chordia will not apply to the facts and circumstances of the Appellant case.

Aggrieved on these three counts, assessee now came in appeal before the Tribunal.

7. Before us Id.counsel for the assessee Shri S. Sridhar argued that the issue in present appeal is regarding application of the provisions of section 40A(3) of the Act pertaining to the purchase of rice as the assessee being in the business of trade in rice namely purchase and sale of rice commodity. He argued that the

transaction of the assessee involves purchase of rice and it is carried on by way of cash purchase only for the convenience of the rice mill owners to settle their payments to the farmers of the village from whom, the paddy is procured. He argued that therefore the transaction made by assessee is for the sake of convenience of the parties involved and also a regular trade practice which was going on in this field. For this Id.counsel argued that there is commercial expediency principle which would get attracted in such circumstances as the commercial expediency is one of the exception carved out in the provisions of section 40A(3) of the Act as well as Rule 6DD. The Id.counsel admitted that the assessee is a trader in rice and has made payment in cash for purchase of rice from rice mills or the purchasers of rice. He argued that the undisputed facts are that the farmers are the cultivators and growers of agricultural goods called paddy likewise the rice mills who are producing the product called rice is the producer of the agricultural produce and therefore, eligible for exemption under Rule 6DD of the Rules negating the applicability of section 40A(3) of the Act.

7.1 Another facet argued by Id.counsel for the assessee is that the rice mills worked as middleman and the payment made to the rice mills for purchase of rice would be exempt from the rigors of section

40A(3) of the Act in view of the exception carved out in Rule 6DD(k) of the Rules as per the recent decision of Co-ordinate Bench of the Tribunal in the case of ITO vs. Shivaji Hi-Tek Foods Pvt. Ltd., in ITA No.111/CHNY/2020, order dated 21.12.2022. The Id.counsel argued that plain reading of the provisions of section 40A(3) of the Act makes it clear that the intention of the legislator is to regulate business transaction and to prevent use of unaccounted money, considering this fact and the facts of the case where the genuineness of the transaction is not in question and when the identity of the receiver is also proved with the bills and vouchers, there is no doubt of unaccounted money being used for the disputed transactions and therefore the addition made deserves to be deleted.

7.2 Alternative argument made by Id.counsel for the assessee is that in any event, the entire purchases being considered for disallowance have consequently led to distorted financial results for the purpose of computing taxable income and a reasonable estimate of profit for taxing the amount at a reasonable figure by rejecting the books of accounts for giving quiets to the dispute. HE also relied on the decision of the Co-ordinate Bench of this Tribunal in the case of DCIT vs. Sree Daksha Property Developers India Pvt. Ltd., in ITA

No.2067/CHNY/2017, order dated 03.05.2023 for estimating the profit rate.

8. On the other hand, the Id.Senior DR heavily relied on the order of CIT(A) and stated that the CIT(A) rejected the assessee's contention in regard to the assessee being grower / purchaser / cultivator or agent or assessee's case falling under business expediency for various paras reproduced above. The Id. Senior DR argued that estimation of profit rate is not possible in case where the disallowance of expenses is made by invoking the provisions of section 40A(3) of the Act as the assessee has made payment in excess of Rs.20,000/- in cash and these are deeming provisions except the exceptions provided in Rule 6DD of the Rules. According to him, the assessee's case did not fall under any of the exceptions and there is no provision which permits estimation of profit rates.

9. I have heard rival contentions and gone through facts and circumstances of the case. Admittedly, the assessee is a trader in rice purchasing rice from rice mills who are the processor and not the grower / producer / cultivator i.e., agriculturists directly. Admittedly, the assessee is also not an agent or the rice mill is not an agent as claimed by assessee, even the assessee could not show

me any business expediency that required to be considered in the light of the exceptions as provided under Rule 6DD of the Rules. I have considered the facts whether the assessee's case requires any estimation of profit. I noted that the assessee made a claim before us that the assessee has made 98% of purchases in account payee cheque or bank draft or through banking channel only as envisaged in the provisions of section 40A(3) of the Act. But due to compulsion imposed by some of the farmers who wanted their money back from the rice mill, clearly reveals that there was a business expediency to make cash payment that being a very minimal amount ranging from 6.92% to 0.28% in various years. The assessee also argued before me that there was fluctuating demand in the rice due to which there is price raise of rice commodity and due to that the farmers agreed to sell in cash to the rice mills. In turn, the rice mill asked the assessee to make part of payment during some months in cash. Considering the entirety of facts, I'm of the view that on the disputed purchase, the AO can apply a higher profit rate instead of profit rate declared by assessee of 0.26%. The assessee has filed complete table capturing the facts of disputed addition, total purchases and percentage of disputed purchases as under:-

Assessment years	Total purchases	Disputed purchases	Percentage of disputed purchases
2012-13	Rs.2,73,99,767/-	Rs.9,70,000/-	3.54%
2013-14	Rs.4,37,63,535/-	Rs.25,33,770/-	5.79%
2014-15	Rs.5,03,76,882/-	Rs.34,83,765/-	6.92%
2015-16	Rs.7,20,88,311/-	Rs.39,54,510/-	5.49%
2016-17	Rs.5,55,48,658/-	Rs.9,06,262/-	1.63%
2017-18	Rs.7,12,06,498/-	Rs.1,96,500/-	0.28%

Further, the assessee has also computed the net profit, total turnover and net profit percentage as under:-

Assessment year	Turnover	Net profit (Rs.)	Net Profit (%)
AY 2008-09	1,11,75,380	-513	0
AY 2009-10	1,30,40,535	17,062	0.13
AY 2010-11	1,69,84,706	18,343	0.107
AY 2011-12	2,23,65,998	31,185	0.133
AY 2012-13	2,74,17,951	71,571	0.261
AY 2013-14	3,73,59,077	91,710	0.245
AY 2014-15	5,38,06,074	2,39,780	0.445
AY 2015-16	7,15,90,305	3,39,445	0.474
AY 2016-17	5,88,45,257	1,47,716	0.251
AY 2017-18	7,83,72,685	2,92,766	0.373
AY 2018-19	6,19,37,510	2,03,580	0.329
AY 2019-20	6,42,32,500	2,61,114	0.406
AY 2020-21	6,87,45,975	1,84,543	0.268

Aggregate Net Profit Percentage = 0.26%

In my view, an estimation of profit @ 10% of the disputed purchases disallowed by AO by invoking the provisions of section 40A(3) of the Act will meet the ends of justice because otherwise this will distort the profit and seeing commercial expediency in the given facts and circumstances, I direct the AO to estimate the profit on the disputed

purchases at 10% and made addition. In term of the above, all these six appeals of the assessee are partly-allowed.

10. In the result, the appeals filed by the assessee in ITA Nos.117 to 122/CHNY/2023 are partly-allowed.

Order pronounced in the open court on 16th June, 2023 at Chennai.

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 16th June, 2023

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|-------------------------|--------------------------|---------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त /CIT |
| 4. विभागीय प्रतिनिधि/DR | 5. गार्ड फाईल/GF. | |