

**IN THE INCOME TAX APPELLATE TRIBUNAL PATNA BENCH
VIRTUAL HEARING AT KOLKATA**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.222/Pat/2019
Assessment Year: 2014-15**

Sanjay Kumar Shah Uttar Maheshwari Jogbani, Araria, Bihar-854328 (PAN: CQGPS3114K)	Vs.	Assistant Commissioner of Income Tax, Circle-3, Purnea
(Appellant)		(Respondent)

Present for:

Appellant by : N o n e

Respondent by : Shri Rupesh Agrawal, Sr. DR

Date of Hearing : 10.07.2023

Date of Pronouncement : 12.07.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), Bhagalpur vide order No. CIT(A)/BGP/10148/16-17/753-757 dated 26.06.2019 against the order of ACIT, Circle-3, Purnea u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 23.12.2016 for AY 2014-15.

2. Assessee has raised the following grounds of appeal:

1. For that on the fact & circumstances of the case, the order of dismissal of the learned Commissioner of Income Tax (Appeal), Bhagalpur is bad in law & fact and also totally against the basic principle of natural justice.

2. For that, on the fact & circumstances of the case, the learned Commissioner of Income Tax (Appeal) rejected Rs.1,00,000/- from 17,55,900/- by stating in the order (stating correct amount is 16,55,900/-) thereby ad hoc & estimated addition by disallowing freight & transport expenses remain to be adjudicated for mis-

appreciation of the fact. This ad-hoc & estimated addition was made by the learned Assessing Officer stating in the order that the assessee failed to substantiate the claim on freight & transport of 1,38,31,000/- after submission of the audited account and also each & every vouchers of the freight & transport expenses. The learned Assessing Officer has not even show one evidence in the order that the appellant has failed to substantiate his claim. Therefore, this ad hoc & estimated addition of 1,00,000/- from out of 1,38,31,000/- is totally baseless, arbitrary & illegal and hence the same is fit to be deleted.

3. For that, on the fact & circumstances of the case, the confirmatory order on addition of 16,55,900/- U/s. 40A(3) on the ground of cash payment over 20,000/- to the traders & commission agent of agricultural product. Nowhere in the order, the learned Assessing officer as well as the learned Commissioner of Income Tax (Appeal) showed any bogus payment in cash. Rather, the learned Commissioner of Income Tax (Appeal) stated in the order that 95% payment on this account made by cheques only and 5% amount was paid in cash. Both the income tax authorities denied the appellant claim of 5% paid in cash under the Rule 6DD(j) (1) & (2) for not stating any exceptional & unavoidable circumstances by totally ignoring the business exigencies for purchasing agricultural product from the agriculturist and its volume of cash payment. Both the authorities below failed to bring any substantial reason for disallowing 5% of total amount of 3,31,18,000/- (approx) throughout the year is not for any business exigencies for purchasing a huge volume of agricultural product from agriculturists. As a result, the disallowance of 16,55,900/- from out of total expenses claim remain totally arbitrary without any proof of bogus payment and the payments are not for the exceptional & unavoidable circumstances and also not for the business exigencies. The only point for deciding against the appellant that the A.R. failed to convince the authorities about the exceptional & unavoidable situation for payment of cash but the total circumstances as explain by the learned Commissioner of Income Tax (Appeal) in the order clearly and specifically says that the appellant is habitual payer by cheques and 95% of the payments on this account is also in cheques. Therefore, it is apparent 5% payment in cash amounting to 1655,900/- is for the requirement & purpose of business only. On such circumstances the failure of the learned A.R. in so many words cannot be the basis for disallowance particularly when every .payees and the payer are the resident of same place. Therefore, the addition made by disallowing the expenses on commission payment without bringing even a single payment in cash is bogus when the very purpose of section 40A(3) is to restrict the bogus payment. Then, the disallowance of 16,55,900/- and its confirmation by the learned Commissioner of Income Tax (Appeal) become hypothetical, imaginary and against the very purpose of the provision of the Act. As such the addition by disallowing , 16,55,900/- on payment in cash to the agent is not legal, justified & proper. Hence, the same is fit to be allowed as expenses and addition on that account is to be deleted.”

3. At the outset, we note that the present appeal has been fixed for hearing in the past on several occasions, however, none appeared on behalf of the assessee to represent the case before us. On query from the Bench Clerk, it was informed that notices issued to the assessee have

not been returned unserved, leading to presumption that they have been duly served on the assessee. From the perusal of the material available before us, we are inclined to take up the matter after taking into account statement of facts, grounds of appeal and the orders of authorities below with the able assistance of Ld. Sr. DR as the appeal relates to filing in the year 2019. We adjudicate the appeal ex parte qua the assessee.

4. Brief facts of the case are that assessee is an individual deriving income from wholesale trading in food grains and other agricultural produce like paddy, maize, wheat, jute etc. through his proprietary concern M/s. Shri Hanuman Traders. During the assessment proceedings, Ld. AO observed that assessee had claimed an expenditure of Rs.1,38,31,000/- under the head "freight and transportation". On the grounds that the assessee could not furnish all the supporting evidences, Ld. AO made an adhoc disallowance of Rs.1,00,000/- and added it to the total income.

4.1. He further observed that against the total purchases made by the assessee during the year, an amount of Rs.16,55,900/- was paid in cash to various commission agents and traders who were also engaged in the same line of business. He tabulated the data and amount wise payments made to Sri Sonu Kumar, Sri Vinbay Kumar, Sri Vipul, Sri Om Prakash Sah, Sri Vijay Sah and Sri Umesh Sah, all residents of Araria. Since each of the cash payments was in excess of the threshold limit as mentioned in the provisions of section 40A(3) of the Act, Ld. AO issued a show cause requesting the assessee to explain as to why the entire amount of Rs. 16,55,900/- should not be disallowed. Ld. AR of the assessee stated that the assessee was a commission agent and since the business is of the food grains, everybody wanted payment in cash in lieu of delivery of goods. Ld. AO did not find favour with the explanation and

disallowed the impugned amount and added it to the total income of the assessee.

4.2. Aggrieved, assessee went in appeal before the Ld. CIT(A), who dismissed the same. Aggrieved, assessee is in appeal before the Tribunal.

5. On the first issue relating to disallowance of Rs.1,00,000/- towards freight and transport expenses out of the total claim on freight and transport of Rs.1,38,31,000/-, Ld. AO made the said disallowance on ad-hoc/estimated basis in absence of full details and convincing documentary evidence. Ld. AO observed that assessee could not justify all the amounts with supporting circumstantial documentary evidence. Nothing is brought on record before us to rebut this. We do not find any infirmity in the findings given by the authorities below in this respect and, therefore, sustain the addition so made. Accordingly, grounds taken in this respect are dismissed.

6. On the second issue relating to disallowance of Rs.16,55,900/- u/s. 40A(3) of the Act towards payment made by the assessee in cash, Ld. AO has listed the party wise transactions in respect of which the said disallowance is made. The same is tabulated as under:

Date of Payment	Name of the party to whom cash payments were made	Total payment in cash
12-03-2014	Sonu Kumar of Jogbani, Araria	1,42,000
13-03-2014	Sonu Kumar of Jogbani, Araria	1,35,100
12-03-2014	Vinay Kumar of Main Road, Jogbani, Araria	72,000
13-03-2014	Vinay Kumar of Main Road, Jogbani, Araria	52,000
14-03-2014	Vinay Kumar of Main Road, Jogbani, Araria	88,500
10-03-2014	Bipul of Main Road, Jogbani, Araria	1,75,000
21-03-2014	Bipul of Main Road, Jogbani, Araria	2,09,000
29-03-2014	Bipul of Main Road, Jogbani, Araria	54,500
17-02-2014	Om Praksh Sah of Main Road, Jogbani, Araria	94,300
18-02-2014	Om Praksh Sah of Main Road, Jogbani, Araria	74,000
19-02-2014	Om Praksh Sah of Main Road, Jogbani, Araria	92,500
01-03-2014	Vijay Sah of Main Road, Jogbani, Araria	71,000
14-03-2014	Vijay Sah of Main Road, Jogbani, Araria	73,000
15-03-2014	Vijay Sah of Main Road, Jogbani, Araria	90,000
26-03-2014	Umesh Sah of Main Road, Jogbani, Araria	2,33,000
	Total payment in cash u/s. 40A(3) of the I.T. Act,1961	16,55,900

6.1. On the above table, Ld. AO observed that assessee has made the payment in cash to the traders. In this respect assessee submitted that he works as a commission agent and in the line of business in which he is engaged in relating to food grains, everybody wants payment by cash against delivery of goods. He also contended that provisions of section 40A(3) of the Act are not applicable in the case of commission agents and, therefore, no disallowance is called for. Assessee also submitted that it has made payments to various farmers which is covered as exception in rule 6DD of the Income Tax Rules, 1962 and, therefore, be allowed. Before the Ld. CIT(A), assessee placed reliance on several judicial precedents to fortify his case.

6.2. In the first appeal, Ld. CIT(A) meritoriously dealt all the contentions of the assessee and also distinguished the judicial precedents relied on by him. All of these have been elaborately discussed in the impugned order of Ld. CIT(A). Ld. CIT(A) observed that assessee is a commission agent and the payments made in cash are to other similar commission agents/traders and not the cultivators, growers or producers in the agricultural produce. Further, Ld. CIT(A) observed that there were no exceptional or unavoidable circumstances which were demonstrated corroboratively by the assessee to justify making the payments in cash. On the contention of the assessee that more than 95% of the payments have been made by the assessee in cheque, for the balance purchases of 5% no genuine difficulty could be presumed as there was nothing on record to suggest that payment made by the assessee was not practicable. Accordingly, the disallowance made was confirmed.

6.3. Submissions made by the assessee in the statement of facts have also been duly considered by the Ld. CIT(A) while disposing the first

appeal. In addition to the observations and findings given by the Ld. CIT(A) as stated above, we also note that there is no such threshold of any percentage upto which payment in cash are permissible before making a disallowance u/s. 40A(3) of the Act since assessee has repeatedly harped on claim of 5% of purchases made in cash and therefore, ought to be allowed.

7. Considering the facts on record, detailed discussion made by the Ld. CIT(A) on the facts and judicial precedents furnished by the assessee as well as the grounds taken before us, we do not find any reason to interfere with the findings given by the Ld. CIT(A) to uphold the disallowance so made. Accordingly, grounds taken by the assessee in this respect are dismissed.

8. In the result, appeal of the assessee is dismissed.

Order pronounced in the open Court on 12th July, 2023.

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 12th July, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent
 3. CIT(A), Bhagalpur
 4. CIT,
 5. DR, ITAT, Patna Bench, Patna
 6. Guard file
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata