

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR**

VIRTUAL HEARING

**BEFORE: DR. S. SEETHALAKSHMI, JM
&
SHRI RATHOD KAMLESH JAYANTBHAI, AM**

**ITA No. 79/Jodh/2022
(ASSESSMENT YEAR- 2015-16)**

Anil Kumar Chandan B-12, Shri Sai Apartments Pawanpuri, Bikaner	Vs	Assistant Commissioner of Income, Tax-02, Bikaner
(Appellant)		(Respondent)
PAN NO. ABCPC 6585 B		

Assessee By	Sh. Amit Kothari, CA
Revenue By	Sh. S. M. Joshi, JCIT-DR
Date of hearing	13/07/2023
Date of Pronouncement	31/07/2023

ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee and is arising out of the order of the National Faceless Appeal Centre, Delhi dated 27.04.2022 [here in after (NFAC)] for assessment year 2015-16 which in turn arise from the order dated 27.12.2017 passed under section 143(3) of the Income Tax Act, by the ACIT, Circle-02, Bikaner.

2. The assessee has marched this appeal on the following grounds:-

“1. The Id. CIT(A) has erred in passing the order which is contrary to the principles of natural justice and without providing adequate opportunity of hearing to the appellant. The order sustaining addition is also bad in law and bad on facts, and without appreciating the facts of the case and statements of facts which are uncontroverted by the Id. AO.

2. The Id. CIT(A) has erred in sustaining the addition of Rs. 20,51,007/- made by the Id. AO by invoking section 40A(3). The addition so sustained is bad in law and bad on facts.

3. The appellant craves liberty to add, amend, alter, modify or delete any ground of appeal on or before its hearing before your honour.”

3. The fact as culled out from the records is that the assessee filed its ITR for A.Y 2015-16 on 26.09.2015 declaring total income of Rs. 47,50,890/-. The case was selected through Computer Aided Scrutiny Selection (CASS) for Limited Scrutiny assessment. Accordingly, a notice u/s 143(2) of the Income Tax Act, 1961 was issued to the assessee on 19.09.2016, which was duly served upon the assessee. Thereafter, a notice u/s 142(1), along with a questionnaire was issued on 13.04.2017, fixing the date of hearing on 21.04.2017. The Authorized Representative (A/R) of the assessee Sh. Devendra Jain, CA provided the requisite details vide his submission dated 21.04.2017. Thereafter, details were called from time to time. Accordingly, the Authorized Representative of the assessee appeared

in the office, submissions were made, verification and discussion on the issues was held as per record. In this assessment proceeding the Id. AO noted that there is a considerable increase in sundry creditors of the assessee as compared to A. Y. 2014-15. In this regard the assessee submitted the confirmation of account of these entities with the assessee. Further, in certain cases, third party enquiries were made and notices u/s. 133(6) were issued. As a part of information sought from these sundry creditors they were asked to produce a copy of their bank book and bank statement for the A. Y. 2015-16 in order to ascertain and confirm the amount of payment being claimed to be made to them by the assessee. In reply to this query, all the sundry creditors to whom such notices u/s 133(6) were issued on a test check basis, have without exception, submitted that they have received the entire amount of payment as cash from the assessee. The same has been categorically stated by the persons that the entire payment was received by them in cash. From the submission it is clear that the entire payment has been received by the entities in cash. Similar reply has been provided by the other entities as well. All the entities also provided the confirmed copy of the account of the assessee. In all the cases a single entry of payment made on a single

day has been confirmed to have been received in cash by these persons. Hence, it is evident that the assessee has received cash payment on a single day exceeding Rs. 20000 in violation of the provisions of the Income Tax Act, 1961. The total number of such cases where the persons have confirmed receipt of cash payment exceeding Rs. 20000 on a single day is as follows:

Sr. No.	Name	Amount paid by the assessee
1	Mahesh Kumar Magilal Tiwari	97000
2	Gautam Jagdish Prasad	97000
3	Ganesh Ram Jetha Ram	97000
4	Ganesh Ram Jagdish Prasad Pareek	97000
5	Karna Ram Shankar Ram	97000
6	Dilip Jaisukh Ram Bishnoi	97000
7	Gajanand Jagdish Prasad Joshi	97000
8	Jasraj Ratanlal Jain	97000
9	Mohd. Iqbal Ajmery	588911
10	Ashok Kumar Chordia	97000
11	Mohd. Ilyas Ajmery	589096
	Total	2051007

3.1 Further, the account which has been confirmed by these persons is also the same as what was furnished by the assessee during the assessment proceedings as already mentioned above.

Hence, even as per the assessee there was only single entry of cash payment made to these sundry creditors, thereby indicating that the entire payment has been made by the assessee on a single day. Further, the confirmation of account submitted by these persons in response to notice u/s 133(6) also confirmed that the entire amount has been received on a single day. Thus both the assessee and these parties have reiterated the same fact and it is undisputed that the assessee has made the cash payments of more than Rs. 20,000/- on single day and the same has been received by these persons, as per their confirmation. Hence the provisions of section 40A(3) are clearly applicable in the case. Different fact altogether which is contrary to submission of both the assessee and the entities as noted above. The assessee has also submitted the copy of self made vouchers as the proof of his claim that the payments were made on different dates and the amount of payment was below Rs. 20,000/-. These vouchers were considered and it is noted that the same are self made and unverifiable. Further the claim is also contrary to the common knowledge that when a person is providing goods or services, he would have raised bills or vouchers, but no such vouchers were produced. Moreover, from all the above-mentioned accounts it is

noted that all the creditors have substantial payments pending. When payments exceeding Rs. 2 lacs is already outstanding, there is no logic as to why these payments would be made in parts either by the assessee or any of its branches. Hence, this submission of the assessee is merely a desperate attempt in the wake of unearthing of disallowable cash payments made by the assessee. Based on this discussion, the cash payment of Rs. 20,51,007/- was disallowed.

4. Aggrieved from the order of the Assessing Officer, assessee preferred an appeal before the Id. CIT(A)/NFAC. A propose to the grounds so raised the relevant finding of the Id. CIT(A)/NFAC is reiterated here in below:

“5.1 I have gone through the assessment order u/s. 143(3) of the IT Act, 1961 was passed by the AO and the grounds of appeal submitted by the appellant. On perusal of the assessment order passed by the AO, it is found that the Ld. AO's contention is the appellant has made the cash payments of more than Rs.20,000/- to the sundry creditors on a single day as per the confirmation made from the submissions of creditors which is in violation of the provisions of section 40A(3) of the I.T. Act, 1961. Therefore, the Ld. AO disallowed the cash payment of Rs.20,51,007/- as claimed by the appellant to be made to its sundry creditors has hereby added to the total income.

5.2. It is relevant to mention here that during the appellate proceedings several opportunities are provided to the appellant and notice dated 23.03.2022 was served on the appellant by fixing hearing date on 28.03.2022 for furnishing some documents as mentioned below:-

“The total number of sundry creditors to whom cash payment made as below:

Sr.	Name	Amount paid by the
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No.		assessee
1	Mahesh Kumar Magilal Tiwari	97000
2	Gautam Jagdish Prasad	97000
3	Ganesh Ram Jetha Ram	97000
4	Ganesh Ram Jagdish Prasad Pareek	97000
5	Karna Ram Shankar Ram	97000
6	Dilip Jaisukh Ram Bishnoi	97000
7	Gajanand Jagdish Prasad Joshi	97000
8	Jasraj Ratanlal Jain	97000
9	Mohd. Iqbal Ajmery	588911
10	Ashok Kumar Chordia	97000
11	Mohd. Ilyas Ajmery	589096
	Total	2051007

1. Please furnish the ledger account of above creditors and also the ledger account of Kolayat Office maintained by whom payments were made on different dates in cash.
2. Please furnish the cash book of the above mentioned sundry creditors.
3. Please furnish the copy of vouchers as the proof of your claim.
4. Any other documents in support of your claim, please submit the same.”

In response to above notice, the appellant failed to produce any evidence or proper explanation against the statement of Ld. AO in the Assessment Order u/s 143(3) passed and also in support of appellant's claim. Even, the appellant did not give any response to the notices issued.

5.3 As there is no response to appeal notices, the appeal is liable to be dismissed in terms of verdicts of the Hon'ble Apex Court and the various High Courts. And also in absence of the proper evidence in support of the appellant's claim, I find that the additions made at Rs.20,51,007/- as disallowance of payments made to Sundry Creditors in the assessment order u/s. 143(3) passed by the AO is justified and acceptable.

5.4 In view of the non-compliance and also in view of the statement of fact and the grounds of appeal are not substantiated by any proper statement or evidence. Hence, the appeal is dismissed accordingly by accepting the assessment order passed by the AO.”

5. The Id. AR appearing on behalf of the assessee humbly prayed before the bench that the order of the Id. CIT(A) is exparty and only

three opportunity were granted and that was in corona pandemic. On merits he has case as that the money paid is from the impress account and below the limit prescribed under the Act and therefore, the assessee be given one chance in the interest of the justice to present the correct facts before the Id. CIT(A).

6. The Id DR is heard who has relied on the findings of the lower authorities but at the same did not object to the prayer of the assessee.

7. We have heard the rival contentions and perused the material placed on record. The Bench noted that the order of Id. CIT(A) is ex-parte without hearing the assessee on merits. The Id. AR of the assessee submitted that the payment is made from the impress balance and is below the limit prescribed u/s. 40A(3) of the Act, the assessee stated that the notice were issued in Corona Period. The Id. AR of the assessee stated at Bar that the assessee deprived of the justice and on merits assessee may be given one chance to present his case on merits. Therefore, in the interest of justice, the assessee may be granted one more opportunity to plead the merits of his case

before the Id. CIT(A). The Bench noted the order of the Id. CIT(A) was passed in corona pandemic period and the notices (three) issued for hearing was in that period only. Thus, we find that the assessee was deprived of the justice. Therefore, in the facts and circumstances of the case and in the interest of justice, we remand back the matter to the record of the Id. CIT(A) for deciding the appeal afresh on merits after giving an opportunity of being heard to the assessee. The assessee is also directed to co-operate with the Id. CIT(A) in deciding the appeal on merits and without sufficient reason, not to take further adjournments. Before parting, we may make it clear that our decision to restore the matter back to the file of the Id. CIT(A) shall in no way be construed as having a reflection or expression on merits of the dispute, which shall be adjudicated by the learned Commissioner of Income Tax, (Appeals) independently in accordance with the law.

In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced under rule 34(4) of the Income Tax Appellate Tribunal Rules, 1963, by placing the details on the notice board.

Sd/-
(Dr. S. Seethalakshmi)
Judicial Member

Sd/-
(Rathod Kamlesh Jayantbhai)
Accountant Member

Dated : 31/07/2023

**Ganesh Kumar, PS*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Assistant Registrar
Jodhpur Bench