

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.119/SRT/2021

Assessment Year: (2015-16)

(Hybrid Hearing)

Amit Industries, Survey No.168/328, 329, 330, Dabhel Industrial Co-op. Soc. Ltd., Dabhel, Daman, Daman – 396210, Daman and Diu (UT)	Vs.	The ITO, Daman Ward, Daman
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAJFA7399H		
(Assessee)		(Respondent)

Assessee by	Shri Hardik Vora, AR
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	15/12/2023
Date of Pronouncement	21/12/2023

आदेश / ORDER

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the Assessee, pertaining to Assessment Year (AY) 2015-16, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-4, Surat [in short “the ld. CIT(A)”], National Faceless Appeal Centre (in short ‘NFAC’), dated 06.07.2021, which in turn arises out of an assessment order passed by Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 21.12.2017.

2. The grounds of appeal raised by the assessee are as follows:

“1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-Tax (Appeals) has erred in confirming the addition of Rs.10,48,712/- on account of stock.

2. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-Tax (Appeals) has erred in

confirming the disallowance of Rs.10,62,577/- made by the assessing officer u/s 40A(3) of the Income Tax Act, 1961.

3. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-Tax (Appeals) has erred in confirming the disallowance of Rs.34,730/- on account of employees contribution to Provident Fund and Superannuation Fund deposited beyond the due date prescribed u/s 36(1)(va) of the Income Tax Act, 1961.

4. Assessee craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

3. At the outset, Ld. Counsel for the assessee informs the Bench that assessee does not wish to press ground no.3, therefore we dismiss ground no.3, as not pressed.

4. The Ld. Counsel for the assessee also stated that ground no.1 raised by the assessee, pertains to the issue of excise proceedings. Since the excise proceedings have not been finalized and no order from the Excise Authorities has been received by the assessee. Since the issue pertains to the excise matters and the excise proceedings are still going on, therefore till the finalization of the excise proceedings, the ground no.1 cannot be argued. The decision of Excise Authorities, will have direct bearing for adjudication of ground No.1. Therefore Ld. Counsel contended that the matter may be set aside to the file of the ld. CIT(A) with the direction to adjudicate this ground as and when the outcome (order) of the Excise Proceedings declared by the Excise Authorities.

5. On the other hand, Learned Senior Departmental Representative (ld. Sr. DR) for the Revenue did not have any objection if the matter is set aside to the file of the ld. CIT(A) to adjudicate the issue afresh as per the outcome of the excise proceedings.

6. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. We note that about ground no.1, raised by the assessee, which pertains to the addition of Rs.10,48,712/- on account of stock. We note that in relation to the said amount / said issue, as per Id Counsel, the proceedings are going on before the Excise Authorities, therefore it would be in the interest of justice, to decide the ground based on the outcome of the proceedings of the Excise Authorities, therefore we are of the view that the matter should be remitted back to the file of Id. CIT(A) to adjudicate the issue relating to ground no.1, as per the outcome of the excise proceedings. Therefore, we set aside the order of Id. CIT(A), on this issue, and remit this issue back to the file of Id. CIT(A) to adjudicate the issue afresh, after taking into account the outcome of the excise proceedings. For statistical purposes, the ground no.1 raised by the assessee is allowed.

7. In the result, the ground no.1 is allowed for statistical purposes, in the above terms.

8. Now, coming to the ground no.2 raised by the assessee which relates to disallowance of Rs.10,62,571/- made by the Assessing Officer under section 40A(3) of the Act.

9. Brief facts *qua* the issue are that during the course of assessment proceedings, the assessee provided details about the transportation charges paid to M/s. Shree Ram Transport Co. The assessing officer found that during the year under consideration, the

assessee has paid transportation charges to the tune of Rs. 10,62,577/- where payment exceeding Rs.35,000/- in a day has been made in cash. Therefore assessing officer disallowed a sum of Rs.10,62,571/-.

10. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A), who has confirmed the action of the Action of Assessing Officer, therefore, assessee is in further appeal before us.

11. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee. The Id Counsel for the assessee submitted that section 40A(3) of the Act speaks about an expenditure and not series of the expenditure and that the payment made in respect of each bill of the transporter is less than Rs.35,000/- and hence disallowance U/s 40A(3) is not required. The Id Counsel has further stated that in the Transport Industry, the transport contractors, who hardly owns their own trucks, suppliers the trucks to the consignor for transportation of goods, issue their consignment note and collect their commission from the Truck Owners and the consignee makes the payment to the respective Truck Drivers. The most of the truck drivers are uneducated and they do not have bank accounts and most of them are residing far away and rarely same truck is repeated and hence truck owners/ drivers wants the payment of transportation charges in cash only. Transport contractors are just mediator between the truck owners and the consignor. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity. We have considered the submission of both the parties. We note that in the assessee`s case under consideration, each truck owner is a separate

person and accordingly, the section 40A(3) of the Act is to applied to each bill, hence section 40A(3) does not apply, in assessee's case, as the payment does not exceed Rs.35,000/-. Besides, the assessee has provided the vehicle number of the truck, and the names of the owners, and the assessing officer did not conduct further enquiry. Since truck belongs to the different person, rarely same truck is repeated, therefore, considering the assessee's facts, section 40A(3) does not apply, hence we delete the addition.

12. In the result, ground No.2 raised by the assessee is allowed.

13. In the combined result, appeal filed by the assessee is partly allowed in above terms.

Order is pronounced on 21/12/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सूत /Surat

दिनांक/ Date: 21/12/2023

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat