

आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ I.T.A. No.238/Viz/2023

(निर्धारण वर्ष / Assessment Year :2014-15)

The Income Tax Officer,
Ward-1(1), 2nd Floor,
C.R. Buildings, MG Road,
Vijayawada – 522002.

Vs. Sri Bomisetty Venkata Siva
Kumar, Prop. M/s. Bommisetty
Sambasiva Rao Trading
Company, 1-4-221-2, RTC
Workshop Road, Bhavanipuram,
Vijayawada-522012.
PAN: ADDPB 9483 C

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Assessee by

: Sri GVN Hari, AR

प्रत्यर्थी की ओर से / Revenue by

: Dr. Satyasai Rath, CIT-DR

सुनवाई की तारीख / Date of Hearing

: 28/02/2024

घोषणा की तारीख/Date of

: 29/02/2024

Pronouncement

ORDER

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the Revenue is against the order of the
Ld. Commissioner of Income Tax (Appeals), National Faceless
Appeal Centre, Delhi [Ld. CIT(A)-NFAC] in DIN & Order No.
ITBA/NFAC/S/250/2023-24/1054402894(1), dated 17/7/2023

arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 [the Act] for the AY 2014-15.

2. Brief facts of the case are that the assessee is an individual and filed his return of income for the AY 2014-15 dated 17/09/2014 declaring total income of Rs. 5,91,420/-. The case was selected for scrutiny through CASS and notices U/s. 143(2) and 142(1) of the Act were issued to the assessee. During the scrutiny proceedings, on perusal of the submissions made by the assessee's Representative, the Ld. AO observed that the assessee made purchases of husk from various Grams and certain varieties of Dal from various farmers which include cash purchases. The AR of the assessee has produced 331 vouchers in respect of the purchases made from the farmers. The AR also submitted before the Ld. AO that the purchases are made from farmers and the payments are made in cash. Thereafter, the Ld. AO asked the assessee to furnish the details of persons from whom the purchases were made, circumstances under which such cash purchases are made, to produce suppliers for cash purchases made by the assessee, details of Dal purchases made in cash and the details of record maintained in respect of cash purchases etc., vide the letter dated 9/12/2016. In reply, the

assessee submitted that the agricultural produce is mainly purchased from the farmers which visit the assessee directly to sell the produce. It was further submitted that the suppliers are none other than the farmers who demanded the assessee to pay in cash. It was also submitted before the Ld. AO that since the payment is made for purchase of agricultural produce, no disallowance can be made U/s. 40A(3) as per the provisions of Rule 6DD(e) of the Income Tax Rules, 1962. The Ld. AO after considering the submissions made by the assessee in replies to the letters issued by the Ld. AO, the Ld. AO issued a show cause notice as to why the cash purchases stated to be made by the from the farmers should not be treated as false and also to offer explanation as to why the provisions of section 40A(3) of the Act should not be invoked. In reply, the assessee made submissions through e-mail. On perusal of the submissions of the assessee and the explanations given thereto, the Ld. AO opined that they are not acceptable for the reasons stated in the assessment order. Ld. AO observed that the assessee failed to produce the farmers, the vouchers produced by the assessee cannot be relied upon and therefore the Ld. AO concluded the assessment by disallowing 20% of the total expenditure of Rs. 4,81,31,019/- treating the same as false purchases. Further, the Ld. AO also

concluded that the since the assessee violated the provisions of section 40A(3) r.w.r 6DD of the Income Tax Rules, 1962 and made cash payments against the purchase of husk, which cannot be considered as a direct agricultural product and also considering the facts and circumstances of the case, 80% of the total cash purchases made by the assessee are disallowed by invoking the provisions of section 40A(3) of the Act. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A)-NFAC. On appeal, the Ld. CIT(A)-NFAC, after considering the facts and circumstances of the case and the explanations as well as the submissions made by the assessee, allowed the appeal of the assessee. On being aggrieved by the order of the Ld. CIT(A)-NFAC, the Revenue is in appeal before the Tribunal by raising the following grounds of appeal:

- "1. The Ld. CIT(A) has erred in passing the order deleting the addition made by the Ld. AO U/s. 40A(3) disallowance, since the AO has tried his level best to verify the information submitted by the assessee also deputed the Inspector to verify the persons who have made transactions with the assessee are agriculturists and the assessee miserably failed to prove the same.*
- 2. The Ld. CIT(A) ought to have upheld the addition made by the AO as the assessee failed to prove that the assessee made the cash payments to the persons as per section 40A(3) r.w.r 6DD of the IT Rules, 1962.*
- 3. The Ld. CIT(A) relied on the decision of the Supreme Court in the case of CIT vs. Cynamid India Limited (104 Taxmann 94 (1994) (SC)] however, the case law quoted by the Ld.*

CIT(A) is not relevant to this case as the assessee has provided only Pattadar pass books of five persons and confirmation letters of two person only and not filed or provided any other information / evidences before the Assessing Officer.

4. *Any other ground that may be urged at the time of appeal hearing."*

3. Now the question before us that is arising out of the findings of the Ld. CIT(A)-NFAC is whether cash purchases of husk beyond the prescribed limit of Rs. 20,000/- per day as contemplated U/s. 40A(3) r.w.r 6DD of the Income Tax Rules, 1962 is applicable to the facts of the case or not? It is the submission of the assessee that the assessee is merely dealing with husk of various agricultural produce viz., Bengal Gram Husk, Green Gram Husk, Massor Husk, Orud Husk, Red Gram Husk etc. The assessee is carrying on his business in the Market Yard and many of the agriculturists used to supply their products to the assessee because of his reputation and his regularity in making the payments to the agriculturists. The Ld. AR further submitted that the agriculturists without approaching any brokers, they used to contact directly the assessee for selling their products i.e., husk from various Grams. The Ld. AR further submitted that the regular agriculturists were selling their products to the assessee directly because the assessee was of the

opinion since the husk is an agricultural product it would not be hit by the provisions of section 40A(3) of the Act. The Ld. AR also drawn our attention to clause-(e) of Rule-6DD(e) of Income Tax Rules, 1962 which reads 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 ²[account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as prescribed under rule 6ABBA, exceeds ten thousand rupees] in the cases and circumstances specified hereunder, namely:—

- (a)..
- (b)...
- (c)...
- (d)...

(e) where the payment is made for the purchase of-

(i) agricultural or forest produce; or

(ii) the produce of animal husbandry (including livestock, meat, hides and skins) or dairy or poultry farming; or

(iii) fish or fish products; or

(iv) the products of horticulture or apiculture, to the cultivator, grower or producer of such articles, produce or products;”

It was further submitted by the Ld. AR that the assessee made purchases from agriculturists who separate the husk at the mills. There is no dispute on the fact that the husk produce is an agricultural produce by the Ld. AO and the Ld. AO has not doubted the genuineness of the transactions made by the assessee while procuring the husk from 331 farmers. The only case of the Ld. AO is that there is a violation of provisions of section 40A(3) of the Act and also the assessee did not

produce farmers before him for enquiries and hence the Ld. AO made disallowance. The Ld AR further submitted that the Ld. AO disallowed 80% of the cash purchases made by the assessee from 331 farmers by invoking the provisions of section 40A(3) of the Act. However, the Ld. AO allowed 20% of the purchases. The Ld. AR further argued that the Ld. AO does not have discretionary power to bifurcate the purchases while applying the provisions of section 40A(3) of the Act. Further, the Ld. AR also submitted that these purchases cannot be treated as bogus since the assessee has disclosed the same while filing the VAT returns. The Ld.AR also submitted a copy of the Central Sales Tax assessment order is produced before us which is available in the paper book pages 244 and 245. The Ld. AR therefore pleaded that since the Ld. AO did not dispute the nature of product which is an agricultural produce, the provisions of section 40A(3) r.w.r 6DD cannot be applied to the instant case.

Per contra, the Ld. Departmental Representative heavily relied on the order of the Ld. AO. The Ld. DR further submitted that the assessee has not produced the farmers before the Ld. AO for enquiries and also the assessee made cash payments beyond Rs. 20,000/- and therefore it is a clear cut case of violation of the provisions of section 40A(3) of the Act. The Ld. DR therefore pleaded to set-aside the order passed by the Ld. CIT(A) and to confirm the order of the Ld. AO.

4. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. It is found from the record that the assessee has made a purchase of Rs. 11.64 Crs during the impugned assessment year which includes the cash purchases of Rs. 4.81 Crs. The assessee has also submitted the receipt for purchases made by the assessee from various farmers aggregating to 331 before the Ld. AO. The Ld. AO simply stated based on the enquiries made by the Income Tax Inspector that no information is available in the office of Agricultural Market Committee regarding the farmers. The Ld. AO further states that even purchases were self-made vouchers and cannot be relied upon. Further, from the submissions of the Ld. AR, we find that the Ld. AO has accepted the sales made by the assessee which is also reflecting in the VAT returns filed by the assessee. The Ld. AR also submitted that the quantitative details on the turnover of the assessee were not disputed by the Ld. AO. We find merit in the argument of the Ld. AR that sales cannot be affected without any valid purchases and hence we find that the Ld. AO contradicted himself by stating that the assessee has made bogus purchases. Further, from the submissions of the Ld. AR, we find that the assessee has produced Pattadar Pass Books of Five farmers before the Ld. AO. We also find from the order of the Ld. CIT(A)-NFAC that the Ld. CIT(A)-NFAC relied on the case of **Hon'ble Supreme Court in the case of CIT vs. Cynamid India**

Ltd (237 ITR 585)(SC) wherein it was held that *“husk produced because of milling of paddy should be held as agricultural produce”*. Following the ratio laid down in that case, the Ld. CIT(A)-NFAC has considered the husk purchased by the assessee as agricultural product. It is also undisputed fact that the assessee is in this line of business for more than 15 years and the Revenue has not contested the similar issue in any of the assessment years. Further, we find that the Ld. CIT(A)-NFAC also relied on the decision of the Coordinate Bench of Delhi in the case of M/s. Geo Connect Ltd vs. DCIT in ITA No. 2896/Del/2018 for the AY 2014-15 wherein it was held that the provisions of section 40A(3) should not be invoked when it falls within the exceptions specified in Rule 6DD of the Income Tax Rules, 1962. Further, the Ld. CIT(A)-NFAC has also relied on various judicial pronouncements as detailed in his order in para 6.8. Considering the facts and circumstances of the case, we find that the cash transactions does not fall within the ambit of section 40A(3) r.w.r 6DD of the Act as it is covered under Clause-(e) of Rule-6DD of the Income Tax Rules, 1962. Further, we rely on the decision of the Hon'ble Gujarat High Court in the case of **Principal Commissioner of Income Tax vs. Keshvalal Mangaldas** reported in [2018] 96 taxmann.com 83 (Gujarat) for the proposition that *“Where cash payments exceeding Rs. 20,000 made by assessee to farmers was clearly covered by exemption provided*

under rule 6DD(e)(i), disallowance made under section 40A(3) was not justified". For the sake of brevity and reference, the relevant paras from the judgment of the Hon'ble Gujarat High Court is reproduced hereunder:

"3. We have heard Mrs. Mauna M. Bhatt, learned advocate appearing on behalf of the Revenue and Shri Manish J. Shah, learned advocate appearing on behalf of the respondent-assessee. We have perused and considered the order passed by the learned A.O., CIT (A) as well as the learned ITAT.

4. It is required to be noted and it is not in dispute that the assessee is engaged in the business as a Commission Agent for purchase/sale of food-grain/agricultural produces and is also holding licence issued by the Agricultural Produce Market Committee. In the Books of Accounts, the assessee has shown the amount of Rs. 2,83,55,337/- paid to various farmers. However, as the payments were exceeding Rs. 20,000/- in cash, the A.O. made the disallowance under Section 40A(3) of the Act. However, considering Rule 6DD(e)(i) of the Income Tax Rules, 1962, and when the payment was made by cash exceeding Rs. 20,000/-, it was permissible if the same was paid for purchase of agricultural produces. It is required to be noted that in the present case, in the Books of Accounts, the said payment was shown to be paid to various farmers and even the receipts were also produced but the assessee could not produce the farmers/list of farmers for which a reasonable explanation was also given. However, without rejecting the Books of Accounts, the learned A.O. made the addition under Section 40A(3) of the Act which is rightly deleted by the CIT (A) and rightly confirmed by the learned ITAT. In the present case, Rule 6DD(e)(i) shall be applicable and the same is rightly applied by the learned CIT (A) as well as the learned ITAT. It cannot be disputed and it is not disputed that as such, the assessee was engaged in the business of Commission Agent for purchase/sale of food-grain and is also holding licence issued by the Agricultural Produce Market Committee.

5. Considering the aforesaid facts and circumstances of the case, when the disallowance made by the learned A.O. under Section 40A(3) of the Income Tax Act has been deleted by the learned CIT (A) and the same has been confirmed by the learned ITAT, it cannot be said that the same is contrary to the provisions of the Act and/or erroneous. No substantial question of law arises. Hence, the present appeal deserves to be dismissed. Accordingly, it is dismissed."

In the instant case, since the Ld. AO has not disputed the fact that the husk is an agricultural produce whereas the Ld. CIT(A)-NFAC has also by

relying on the decision of **CIT vs. Cynamid India Ltd (237 ITR 585)(SC)** (**supra**) held that husk is an agricultural produce, in our opinion the provisions of section 40A(3) r.w.r 6DD of the Income Tax Rules, 1962 cannot be invoked in the instant case as it is covered under Clause-(e) of Rule 6DD of Income Tax Rules, 1962. Therefore, we find no infirmity in the order of the Ld. CIT(A)-NFAC and hence no interference is required in the Ld. CIT(A)-NFAC's decision. It is ordered accordingly.

5. In the result, appeal filed by the Revenue is dismissed.

Pronounced in the open Court on 29th February, 2024.

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated :29.02.2024

OKK - SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – Sri Bommisetty Venkata Siva Kumar, Prop. M/s. Bomisetty Sambasiva Rao Trading Company, 1-4-221-2, RTC Workshop Road, Bhavanipuram, Vijayawada-522012.
2. राजस्व/The Revenue – The Income Tax Officer, Ward-1(1), 2nd Floor, CR Buildings, MG Road, Vijayawada – 522 002.

3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam