

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

ITA NO. 3552/MUM/2023

:

A.Y : 2014-15

Avinash Kumar Ojha
1904/C, Pinnacolo Bldg., RKB School
Road, Beverli Park, Mira Road (East),
Thane 401 107.

Vs. Income Tax Officer
Ward 2(1), Thane.
(Respondent)

PAN : AAKPO3743L (Appellant)

**Appellant by : Shri Rakesh Joshi &
Shri Anil Sanklecha**

Respondent by : Shri Manoj Kumar Sinha

Date of Hearing : 13/02/2024

Date of Pronouncement : 08/03/2024

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER :

The assessee has filed this appeal challenging the order dated 08.08.2023 passed by learned Commissioner of Income Tax (Appeals), NFAC, Delhi (hereinafter referred to as "Id. CIT(A)") and it relates to assessment year 2014-15. The assessee is aggrieved by the decision of Id. CIT(A) in partially confirming disallowance of Commission expenses and fully confirming disallowance made under Section 40A(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The facts relating to the case are discussed in brief. The assessee is the proprietor of a concern named M/s Quick softpro. The above said concern is engaged in the business of importing sign making machinery, spares and related accessories and is also undertaking Annual Maintenance Contract works. Besides the above, the assessee is also developing customised soft wares and exporting it. It is stated that this is the first year of operation of the assessee. During the course of assessment proceedings, the Assessing Officer noticed that assessee has claimed Commission expenses of Rs.52.58 lacs. The Assessing Officer took the view that the above said expenses have not been properly explained and accordingly disallowed the same. The Assessing Officer also noticed that the assessee has claimed expenses on Service charges aggregating to Rs. 3,09,000/-. The Assessing Officer noticed that all these expenses have been paid by way of cash. Accordingly, he took the view that there is violation of Section 40A(3) of the Act and disallowed a sum of Rs.3,00,000/- under Section 40A(3) of the Act.

3. In the appellate proceedings, the Id. CIT(A) granted partial relief in respect of disallowance of Commission expenses by confirming the addition to the extent of Rs.16,50,000/-. He also confirmed the addition made under Section 40A(3) of the Act fully. Aggrieved by the additions confirmed by Ld CIT(A), the assessee has filed this appeal before the Tribunal.

4. With regard to disallowance of Commission expenses, we noticed that an aggregate amount of Rs.16,50,000/- was claimed to have been paid to following three persons: -

(a)	Ms. Gyanti Singh	Rs.4,57,000/-
(b)	Mr. Amit Pathak	Rs.5,65,000/-
(c)	Mr. Anupam Raj	Rs.6,28,000/-
	Total	Rs.16,50,000/-

It was stated that the Commission was paid to Ms Gyanti Singh for arranging sale of machineries. The commission for the remaining two persons were paid in connection with the development and sale of soft wares. We notice that the Assessing Officer had disallowed the above said expenses on the reasoning that the vouchers submitted by the abovesaid persons for claiming Commission from the assessee were computerised printouts and they did not contain details of State Tax registration. However, we notice that the assessee has filed various details relating to the abovesaid three persons before Id CIT(A) and hence the Id. CIT(A) has called for a Remand report from the AO. The details furnished by the assessee consisted of confirmation letters obtained from all the above said persons including their PAN, copies of bank statement, etc. In the Remand report, the Assessing Officer submitted that the notice sent to Mr. Gyanti Singh has been returned unserved by the postal authorities with the remark "unclaimed". With regard to the notice sent to Mr. Anupam Raj, same was returned by the postal authorities with the remark "left". With regard to the notice sent to Mr. Amit Pathak, the Assessing Officer observed that the said person could not specify the exact nature of services rendered by him to the assessee. The Assessing Officer further observed that the assessee has not deducted TDS on the above said payments. Accordingly, it appears that the Assessing Officer has recommended that the additions made by him should be sustained.

5. In the rejoinder to the Remand report, the assessee submitted before Ld CIT(A) that the notices were sent by the AO to old addresses of two persons and hence they did not respond. The assessee submitted that these persons have confirmed receipt of Commission payments and their identity has been proved. Accordingly, the assessee submitted that the commission expenses claimed should be allowed. The Id. CIT(A) was, however, not convinced with the contentions of the assessee and accordingly, confirmed the disallowance.

6. We heard rival contentions and perused the record. We also examined the documents furnished by the assessee with regard to the commission payments made to the above said three persons. All the three persons have raised bills on the assessee and have received payments by way of cheques. There should not be any dispute that the necessity to obtain Service tax registration will arise only if the receipt exceeds the threshold limit prescribed for the said purpose. Hence non-availability of service tax registration number cannot be a ground to disallow commission expenses. While the payment made to Ms Gyanti Singh was towards commission for machinery sales, the payments made to other two persons are related to software development and sales. With regard to the claim of machinery sales, we notice that the assessee has not proved the nexus between the commission payment and the sales effected. Further, it is not shown that Ms Gyanti Singh appears to be not fully educated. Under these set of facts, we are of the view that the disallowance of commission expenses of Rs.4,57,000/- paid to Ms Gyanti Singh is justified.

7. With regard to the payments made to other two persons, we notice that the same has been paid towards software development works. We noticed

earlier that the assessee is mainly engaged in the machinery import and sales, besides undertaking AMC works. Hence it is quite possible that the assessee would require services of other persons to support him in software development works. Hence, it is possible that the assessee has availed services from these two persons in developing software. Further, we notice that the AO has not brought on record any material to show that the payments made to these two persons are bogus in nature. The Ld A.R submitted that the current year, being first year of operation of the assessee, there is no requirement for deducting TDS from the payments made to these two persons. Accordingly, we are of the view that the commission payment made to these two persons do not require disallowance. Accordingly, we modify the order passed by Ld CIT(A) on this issue and direct the AO to restrict the disallowance to Rs.4,57,000/-, being the commission paid to Ms Gyanti Singh and delete the remaining amount of disallowance.

8. The next issue relates to the disallowance made u/s 40A(3) of the Act. The AO has disallowed a sum of Rs.3.00 lakhs observing that the payments have been made by way of cash. The Ld CIT(A) also confirmed the same. The Ld A.R submitted that these payments have been made towards service charges and the payment made on one occasion did not exceed the prescribed limit of Rs.20,000/- applicable to the year under consideration. He submitted that the assessee has furnished all the vouchers to the tax authorities and copies of them are placed in the paper book. We perused the same and notice that the payment made on one occasion did not exceed the threshold limit of Rs.20,000/-. We notice that the Ld D.R could not controvert this fact. Accordingly, we are of the view that the tax authorities are not justified in invoking the provisions of

sec.40A(3) of the Act without verifying the relevant facts of the present case. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the disallowance of Rs.3.00 lakhs made u/s 40A(3) of the Act.

9. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 8th March, 2024.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai, Date : 8th March, 2024

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Copy to :

- 1) The Applicant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "A" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai