

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: 586/CHNY/2023

निर्धारण वर्ष/Assessment Year: 2014-15

M/s. Sivasakthi Tyres,
184/9B, VVD Road,
Tuticorin – 628 008.

The Income Tax Officer,
Vs. Ward -4,
Tuticorin.

PAN: ABKFS 7778L

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri V.J. Arul Raj &

Shri P. Sivagaminathan, Advocates

प्रत्यर्थी की ओर से/Respondent by

: Shri AR.V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 20.03.2024

घोषणा की तारीख/Date of Pronouncement

: 20.03.2024

आदेश /ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in Order No.ITBA/NFAC/S/250/2022-23/1050727795(1) dated 14.03.2023. The assessment was framed by the Income Tax Officer, Ward 4, Tuticorin for the assessment year 2014-15 u/s.143(3) r.w.s. 263 of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 08.11.2019.

2. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the AO in making disallowance of payments made by way of cash for purchase in excess of Rs.20,000/- and thereby violating the provisions of section 40A(3) of the Act. The assessee has raised 17 grounds, which are argumentation, factual and citation of various case laws and hence, need not be reproduced.

3. Brief facts are that the assessee firm is engaged in the business of sale of tyres and tubes. The assessee filed its return of income for the relevant assessment year 2014-15 on 30.05.2015 and assessee's case was selected for scrutiny assessment u/s.143(2) of the Act. The assessee's scrutiny assessment was completed u/s.143(3) of the Act on 30.11.2016. Subsequently, the PCIT, Madurai passed revision order u/s.263 of the Act holding the assessment framed by AO u/s.143(3) dated 30.11.2016 as prejudicial to the interest of Revenue and erroneous and directed the AO to make fresh assessment after making enquiries and verification in regard to cash payment made in excess of Rs.20,000/- for making purchases and also consider the provisions of section 40A(3) of the Act. The assessee has accepted this revision order and that has become final. In consequence to revision order, the AO framed

assessment u/s.143(3) r.w.s. 263 of the Act vide order dated 08.11.2019 and verified the cash payment made by assessee for purchase made from M/s. Pavithra Tyres. The AO noted from the ledger copy of M/s. Pavithra Tyres that the assessee has made total purchases to the tune of Rs.20,64,975/- in cash other than the account payee cheque or Demand Draft in violation of provisions of section 40A(3) of the Act. Finally, after seeking explanation from the assessee, the AO noted that the assessee has made cash payment to the tune of Rs.14,68,005/- and he narrated these details in tabular chart in the assessment order at page 2 & 3. The assessee before AO and CIT(A) also contended that the payment made on single day to M/s. Pavithra Tyres is below the statutory limit of Rs.20,000/- as prescribed u/s.40A(3) of the Act. But the AO going through the ledger account of M/s. Pavithra Tyres noted that payments are made by way of cash in excess of Rs.20,000/- on single day to the extent of Rs.20,64,975/-. Hence this explanation that the payments were below Rs.20,000/- on a single day is rejected. The AO noted that there are certain payments on Sundays and out of total payments of Rs.20,64,975/- made to M/s. Pavithra Tyres, a sum of Rs.9,33,400/- were made on Sundays which shows nearly 50% of payments were made on Sundays. The AO thereby disallowed a sum of Rs.14,68,005/- as the assessee has made

payments by way of cash in excess of Rs.20,000/- on a single day in violation of provisions of section 40A(3) of the Act and assessee could not explain how assessee's case falls under exemptions as provided under Rule 6DD of the Income Tax Rules, 1962 (hereinafter the 'Rules'). Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) also confirmed the action of the AO by observing as under:-

“Before me, the appellant has stated that the same reasons which have been stated before the AO. The contentions of the appellant are that an amount of Rs.9,87,000/- was made by way of cash during the bank holidays and the remaining amount of Rs.4,80,605/- was the cash payment made before the limit of Rs.20,000/- this is the main contention of the appellant. During the current proceedings the appellant had filed ledger copies of the appellant as well as the ledger copy of M/s. Pavithra Tyres. On perusal of both these ledger copies, I have noticed that the amount exceeding Rs.20,000/- was paid to the tune of Rs.14,68,005/-. It is also noticed that the AO had fairly did not considered the payments made by way of cash below the limit of Rs.20,000/-. He had only taken the amount exceeding Rs.20,000/- into consideration for the purpose of invoking section 40A(3) of the IT Act. Therefore, the contentions raised by the appellant are found devoid of merits and not supported by any evidence. On the other hand the AO had fairly excluded the amounts which are below the limit of Rs.20,000/- and considered only the amounts which are exceeding Rs.20,000/- for making an addition u/s 40A(3) of the IT Act. Moreover the amounts which have been given in a tabular form by the AO, which is brought out herein above, are perfectly reflecting in the respective ledger copies of the appellant as well as M/s. Pavithra Tyres. There is no mismatch found in the assessment order vis-à-vis with the ledger copies of the appellant as well as M/s. Pavithra Tyres. Therefore, the contentions of the appellant are found lack of force and merits. In the circumstances, I am inclined to agree with the findings of the AO. Accordingly the addition made by the AO u/s. 40A(3) amounting to Rs.14,68,005/- is sustained. All the grounds of appeal taken by the appellant are dismissed.”

Aggrieved, now assessee is in appeal before the Tribunal.

5. We have heard rival contentions and gone through facts and circumstances of the case. Before us, the Id.counsel for the assessee made arguments that the assessee's transactions are genuine transactions and provisions of section 40A(3) of the Act does not apply to genuine transactions . It was pointed out to Id.counsel by Id. Senior DR that the decision of Hon'ble Madras High Court in the case of Vaduganathan Talkies and Another vs. Income Tax Officer, reported in 428 ITR 224 has categorically held that the provisions of section 40A(3) of the Act will apply to genuine transactions also, in case the payments are in excess of Rs.20,000/- on a single day.

5.1 As regards to assessee's another plea that as per the chart depicted in the order of CIT(A), there are three dates falls on Sundays for which payments made read as under:-

S.No.	Date	Cash Receipt No.	Amount
1.	28.04.2013	237	34,000
2.	25.08.2023	1413	50,000
3.	09.02.2014	2962	50,000
Total Amount Rs.			1,34,000

The Id.counsel at least requested for this Rs.1,34,000/- be deleted and further, he drew our attention to the assessment order that on

other dates also Rs.9,33,400/- was paid on Sundays and admitted by AO. We noted from the assessment order which reads as under:-

“Out of the total payments of Rs.20,64,795/- made to Pavitra tyres a sum of Rs.9,33,400/- were made on Sundays which shows nearly 50% of the payments were made on Sundays.”

It means that the total payments made on Sundays is Rs.9,33,400/- plus the above payment of Rs.1,34,000/-. Therefore, the total payments made on Sundays comes to Rs.10,67,400/- out of Rs.20,64,795/-, which means the remaining balance to be disallowed remains at Rs.9,97,395/-. Hence, we restrict the addition for disallowance u/s.40A(3) of the Act at Rs.9,97,395/.

5.2 Another argument of Id.counsel for the assessee as regards to applicability of Rule 6DD(d) of the Rules, wherein payment is made by way of adjustment of amount by way of liability incurred by the payee for any good supplied or service rendered by the assessee to the payment, the Bench asked the assessee as to whether such plea or this fact is emanating out of the order of AO or CIT(A) or during the course of revision proceedings u/s.263 of the Act, the Id.counsel could not point out any such plea taken by assessee or even now, he could not submit any evidence of any payment made by way of adjustment against the amount of any liability incurred by the payee for any good supplied or service rendered by assessee to such

payee. Since, the assessee is unable to show any evidence or could not show any plea before lower authorities, we reject this plea.

5.3 In term of the above, the appeal of the assessee is partly-allowed.

6. In the result, the appeal filed by the assessee is partly-allowed.

Order pronounced in the open court at the time of hearing on 20th March, 2024 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 20th March, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.