



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

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND
MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.73/CTK/2024
Assessment Year : 2010-2011

Sree Hanuman Bhandar, Malgodown, Cuttack.	Vs	DCIT, Circle-1(1), Cuttack
PAN/GIR No.AAEFS 6005 M		
(Appellant)	..	(Respondent)

Assessee by : Shri P.K.Mishra, Adv
Revenue by : Shri S.C.Mohanty, Id Sr DR

Date of Hearing : 29/04/2024
Date of Pronouncement : 29/04/2024

ORDER

Per Bench

This is an appeal filed by the assessee against the order of the Id CIT(A), NFAC, Delhi dated 27.12.2023 in Appeal No.CIT(A), Cuttack/10024/2016-17 for the assessment year 2010-2011.

2. Shri P.K.Mishra, Id AR appeared for the assessee and Shri S.C.Mohanty, Ld Sr. DR appeared for the revenue.

3. It was submitted by Id AR that the addition in the present case was on account of invoking the provisions of section 40A(3) of the Act. It was

the submission that the assessee is a wholesale dealer in pulses, edible oil and other grocery items. It was the submission that it was only on account of the demand of the seller, the assessee has paid cash. It was the submission that the trading results by the assessee have been accepted. The books of account of the assessee have also been accepted. The identity of the seller has also been established. Only because the assessee has paid cash, the disallowance has been made. It was the submission that if the disallowance is considered, the net profit of the assessee would go far high, it would be against the business norms. It was the submission that the assessee has not produced the letter, where the seller had demanded cash from the assessee. It was the submission that the issues may be restored to the file of the AO and the assessee would be in a position to substantiate the reasons for the payment in cash.

4. In reply, Id Sr DR submitted that the provisions of Rule 6DD no more survives in the statute. It was the submission that the addition as made in the assessment order is not on account of any discrepancy in the books of account of the assessee. It was the submission that the cash payment has been made in excess of the prescribed limit, which is a statutory violation and this is a case of deemed income in the hands of the assessee. It was the submission that this deemed income being assessed does not only get the net profit of the assessee, therefore, the addition made by the AO and confirmed by the Id CIT(A) is liable to be sustained.

5. We have considered the rival submissions. It has been clearly submitted by Id AR that the assessee would be in a position to substantiate the reasons for the payment of cash for the purchases. A perusal of the assessment order also clearly shows that the purchase has been made by the assessee from M/s. Jaganath Distributors and the Assessing Officer has categorically stated that the party Jaganath Distributors was genuine and the purchases were also genuine. The Assessing officer has also categorically recorded that the assessee had agreed to make payment in cash because the concession rate was charged by the party against cash payment. No evidence has been produced by the assessee that Jaganath Distributor has demanded cash. This being so, the issues in this appeal are restored to the file of the Assessing Officer to grant the assessee adequate opportunity to substantiate his case as to why he has paid cash against purchases. The assessee is directed to produce the evidence in support of the fact that the Jagannath Distributors has demanded payment in cash and thereafter, the AO will decide the issue as per law.

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

Order dictated and pronounced in the open court on 29/04/2024.

Sd/-
(Manish Agarwal)
ACCOUNTANT MEMBER

sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 29/04/2024

B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Sree Hanuman Bhandar,
Malgodown, Cuttack
2. The Respondent: DCIT, Circle-1(1), Cuttack
3. The CIT(A)- NFAC, Delhi
4. Pr.CIT, Bhubaneswar
5. DR, ITAT,
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack