

IN THE INCOME TAX APPELLATE TRIBUNAL PATNA BENCH, PATNA
BEFORE RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER
AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

ITA No. 71/PAT/2021
Assessment Year: 2017-18

S. Ranjan & Brothers Puja Bazar, Motijheel, Muzaffarpur-842001. PAN: AAOFS 8056 Q (Appellant)	vs	DCIT, Circle-1, Muzaffarpur (Respondent)
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Present for:

Assessee by : None

Revenue by : Shri Sushil Kumar Mishra, JCIT, DR

Date of Hearing : 09.05.2024

Date of Pronouncement : 14.05.2024

ORDER

PER SONJOY SARMA, JM:

This appeal of the assessee for the assessment year 2017-18 is directed against the order dated 30.08.2021 passed by the Id. Commissioner of Income-tax (Appeals), NFAC, Delhi [hereinafter referred to as 'the Id. CIT(A)'].

2. None appeared on behalf of the assessee.

3. Brief facts of the case are that the assessee is engaged in the business of civil constructions in Government Departments and doing its construction work under the name and style of M/s. S. Ranjan & Brothers and filed its return of income declaring total income at Rs. 79,70,040/-. The case of the assessee was selected for scrutiny under CASS for the reason that "Abnormal increase in cash deposits during demonetization period as compared to pre-demonetization period". Accordingly, statutory notice u/s 143(2)

and 142(1) of the Act issued to the assessee. In response to the notice, assessee appeared time to time before the AO furnishing various details as asked for. During the assessment proceeding, the ld. AO noticed that the assessee has made payment of Rs. 1,90,000/- in cash out of total amount of Rs. 6,90,000/- to M.M. Nirman Pvt. Ltd. Accordingly, ld. AO disallow the amount of Rs. 1,90,000/- payment made in cash and added to the income of the assessee. Similarly, on perusal of ledger account of Sai Highway and Building Contractor in the books of the assessee firm, ld. AO found that the assessee had made payment of Rs. 4,38,466/- to different persons on 31.03.2017 in cash. Accordingly, the alleged payment made of Rs. 4,38,466/- was disallowed u/s 40A(3) of the Act.

4. Dissatisfied with the above order, assessee went into appeal before the ld. CIT(A) where the appeal of the assessee was partly allowed. However, payments made to M/s. M.M. Nirman Pvt. Ltd. of Rs. 1,90,000/- sustained by the ld. CIT(A).

5. Aggrieved by the above order, assessee is in appeal before this Tribunal raising multiple grounds of appeal. The main grievance of the assessee is that while passing the impugned order by ld. CIT(A) confirming the disallowance made u/s 40A(3) of Rs. 1,90,000/- is not correct as the provisions did not apply to capital expenditure made during the assessment year under consideration. He further stated that assessee has never made payment in a day of cash Rs. 20,000/- or more. He stated that the alleged payments of Rs. 1,90,000/- were made on several days and

within the limit not exceeding Rs. 20,000/- in a day. In order to substantiate his claim produced a copy of the details along with confirmation from the supplier of the goods in order to prove the fact in his favour. He further contended that Hon'ble Punjab & Haryana High Court in the case of Gurdas Garg vs CIT, Bathinda, 63 taxman. 289 where Hon'ble Punjab & Haryana High Court has held that genuineness of payment is not disbelieve the disallowance u/s 40A(3) cannot be made. Moreover, the alleged payments for the materials purchased were capitalize and depreciation was claimed on capital assets purchased by the assessee. Therefore, the application of section 40A(3) is not attract in the case of assessee.

6. On the other hand ld. DR supported the confirmation of addition made by ld. CIT(A) while passing the impugned order against the assessee.

7. We after hearing the rival submission of the parties and perused the material available on record considering the confirmation letter filed by the assessee find that alleged payments of Rs. 1,90,000/- were made on various dates by the present assessee and payments were made within limit as prescribed under the law. Similarly, the payments were made in respect of capital expenditure and assessee has also claimed depreciation on assets purchase out of cash. Therefore, considering the various aspects of the case and documents furnished by the assessee we find that the alleged payments were made not exceeding of Rs.

20,000/- in a particular day. Therefore, section 40A(3) is not attract in the case of assessee. Accordingly, alleged addition made by AO is uncalled for. We, therefore, inclined to delete the addition of Rs. 1,90,000/- as made in the case of assessee. In terms of the above appeal of the assessee is allowed.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 14.05.2024

Sd/-

(Rajesh Kumar)
ACCOUNTANT MEMBER

Sd/-

(SONJOY SARMA)
JUDICIAL MEMBER

Kolkata, Dated: 14.05.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: S. Ranjan & Brothers.
2. The Respondent: DCIT, Circle-1, Muzaffarpur.
3. The CIT,
4. The CIT (A)
5. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata