

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE "A" BENCH : PUNE

BEFORE SHRI RAMA KANTA PANDA, VICE PRESIDENT  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA.No.116/PUN/2024 [E-APPEAL]  
Assessment Year 2018-2019

|   |     |   |
|---|-----|---|
| Maa Sankalp Buildcon,<br>B-III KPCT Mall, Fatima<br>Nagar, Pune – 411030.<br>Maharashtra.<br>PAN AAXFM4689A | vs. | The Income Tax Officer,<br>Ward-14(1), Aayakar<br>Sadan, Bodhi Towers,<br>Salisbury Park, Pune.<br>PIN – 411 037.<br>Maharashtra. |
| (Appellant)   |     | (Respondent)  |

|                |                        |
|----------------|------------------------|
| For Assessee : | Shri Sharad A Shah     |
| For Revenue :  | Shri Ramnath P Murkude |

|                         |            |
|-------------------------|------------|
| Date of Hearing :       | 03.07.2024 |
| Date of Pronouncement : | 09.07.2024 |

**ORDER**

**PER RAMA KANTA PANDA, V.P. :**

This appeal filed by the assessee is directed against the order dated 21.11.2023 of the learned CIT(A)-NFAC for the assessment year 2018-2019.

2. Although a number of grounds have been raised by the assessee, however, these all relate to the order of the Ld. CIT(A) in confirming the disallowance of Rs.22,80,823/- made by the Assessing Officer u/sec.40A(3) of the Act.

3. Facts of the case in brief are that the assessee is a partnership firm engaged in the business of construction and

selling of residential and commercial complex. It filed its return of income on 31.10.2018 declaring total income of Rs.67,84,626/-. The case of the assessee was selected for compulsory scrutiny for verification of the income from real estate business. Statutory notices u/sec.143(2) and 142(1) were issued and served upon the assessee, to which, the A.R. of the assessee appeared from time to time and filed various details.

3.1 During the course of assessment proceedings, the Assessing Officer noted that assessee has made various cash payments exceeding Rs.10,000/- in violation of provisions of sec.40A(3) of the Act, the total of which comes to Rs.22,80,823/-. The Assessing Officer issued a show cause notice dated 25.03.2021 along with draft assessment order with proposed addition of Rs.22,80,823/- on account of violation of provisions of sec.40A(3) of the Act. Since the assessee could not satisfy the Assessing Officer as to how the provisions of sec.40A(3) are not applicable, the Assessing Officer in the order passed u/sec.143(3) r.w.secs.143(3A) and 143(3B) of the Act made addition of Rs.22,80,823/- to the total income of the assessee.

4. Before the ld. CIT(A), it was argued that the Assessing Officer without calling for the details of expenses incurred made the addition of the same and that the provisions of

sec.40A(3) are not applicable to the facts of the case since the payments have been made for plying, hiring or leasing of goods carriage for which the limit is of Rs.35,000/- and not Rs.10,000/-. The assessee also enclosed transport invoices for additional clarity since the case is falling under the second proviso to sec.40A(3) of the Act.

4.1 However, the Ld. CIT(A) was not satisfied with the arguments advanced by the assessee and upheld the additions made by the Assessing Officer by observing as under:

*“7.1.2. The appellant in his submission has submitted that his case is falling under the second proviso of section 40A(3) of the Act. I have gone through the submission of the appellant and have noticed that the appellant is a builder and contractor and all the payments were not made to the transporter but majority of payment were made to the purchase of Sand, Shuttering materials etc. Hence, it cannot be said that all the payments were made to transporters. The appellant has not bifurcated such payments. Hence, the contention of the appellant is rejected and the addition made by the AO is confirmed.”*

5. Aggrieved by the order of the Ld. CIT(A), the assessee carried the matter in appeal before the Tribunal.

5.1 Learned counsel for the assessee submitted that merely because the assessee is a builder and contractor, it does not mean that payments are not made to the transporters. Despite observing that the assessee has made certain payments to the transporters, the Ld. CIT(A) without due application of mind has sustained the entire addition. He accordingly submitted that the matter may be restored back to the file of Assessing Officer with a direction to verify all the bills and vouchers and

the applicability of second proviso to Sec.40A(3) of the Act and decide the issue as per fact and law.

6. The Learned DR on the other hand heavily relied on the order of Assessing Officer and Ld. CIT(A). He submitted that during assessment proceedings the assessee did not file the requisite details despite being asked by the Assessing Officer. However, he has filed certain details before the Ld. CIT(A) and the Ld. CIT(A) has gone through the details and noted that the assessee is a builder and contractor and not all the payments were made to the transporters but majority of payments were made towards purchase of sand and building material etc. Therefore, the order of the ld. CIT(A) be upheld and the grounds raised by the assessee be dismissed.

7. We have heard the rival arguments advanced by both the sides and perused the record. We find the Assessing Officer made addition of Rs.22,80,823/- on the ground that the assessee has violated the provisions of sec.40A(3) by making cash payments exceeding Rs.10,000/-. We find although the assessee before the Ld. CIT(A) made submissions that his case is falling under second proviso to sec.40A(3) of the Act, however, the Ld. CIT(A) observed that the assessee is a builder and contractor and all the payments were not made to the transporters but majority of payments were made towards purchase of sand and certain other material etc. In our

opinion, even if all the payments were not made to the transporters but majority of payments were made towards purchase of sand and certain other material etc., it was incumbent upon the Ld. CIT(A) to identify those payments which were made to the transporters to which the second proviso of sec.40A(3) of the Act are applicable and should have given appropriate relief to the assessee on account of non-violation of provisions of sec.40A(3) of the Act. However, the Ld. CIT(A) by passing a general remark, has dismissed the appeal filed by the assessee, which in our opinion, is not in accordance with law. We find merit in the submission of the learned counsel for the assessee that since payments were made to transporters for which the second proviso to sec.40A(3) are applicable and since it requires verification at the level of the Assessing Officer, the matter may be restored to the file of Assessing Officer for adjudication of the issue afresh. Further, the details reproduced by the Ld. CIT(A) in his order at pages 5 to 13 clearly indicates that certain payments were made to transporters. Therefore, considering the totality of the facts and circumstances of the case and in the interest of justice, we deem it proper to restore the issue back to the file of the Assessing Officer with a direction to examine the details of payments made to various parties in excess of Rs.10,000/- and also examine the applicability of the second proviso to sec.40A(3) of the Act and decide the issue as per

fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

8. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 9.07.2024.

Sd/-  
[MS. ASTHA CHANDRA]  
JUDICIAL MEMBER

Sd/-  
[RAMA KANTA PANDA]  
VICE PRESIDENT

Pune, Dated 9<sup>th</sup> July, 2024

VBP/-

Copy to

|    |                             |
|----|-----------------------------|
| 1. | The applicant               |
| 2. | The respondent              |
| 3. | The Pr. CIT, Pune concerned |
| 4. | D.R. ITAT, A-Bench, Pune    |
| 5. | Guard File.                 |

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,  
Pune.