

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA No.1401/Del/2024, A.Y.2016-17

Kapil Goel N-1303, VVIP Addresses Rajnagar Extension, Ghaziabad, Uttar Pradesh PAN: AIIPG0037F	vs.	ITO, Ward2(1)(3) Ghaziabad
(Appellant)		(Respondent)

Appellant by	Sh. Govind Aggarwal, CA
Respondent by	Sh. D.K.Shrivastav, Sr. DR

Date of Hearing	25/07/2024
Date of Pronouncement	30/07/2024

ORDER

PER AVDHESH KUMAR MISHRA, AM

This appeal of the Assessment Year (In short, the 'AY') 2016-17 preferred by the assessee is directed against the order dated 30.01.2024 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), New Delhi [In short, the 'CIT(A)'].

2. Following grounds have been raised by the appellant/assessee:-

"1. That the order passed by income Tax officer is arbitrary, excessive, unjustified and illegal on the facts and in the circumstances of the case and is liable to be set aside as the AO made an addition of Rs. 1,71,37,274/- as unexplained cash purchase to the total income of the appellant. That having regard to

the facts and circumstances of the case, Ld. Assessing Officer has erred in law and on facts in making above the additions without giving an adequate opportunity of being heard. That the learned assessing officer erred in law by not granting any opportunity of being heard for verification of transactions before issuing notice u/s 148 of The Income Tax Act, 1961.

2. That the Learned Assessing officer has not granted proper opportunity of being heard Be the appellant is a trader of agriculture produce of Atta and Maida which are included in the exception to 40A(3) and 40A(3A) which exempt such assessee from the limit of making payment in cash exceeding INR 20,000/- made to a person in a day through cash payment.

In the last ground, a prayer to crave, leave for addition, modification, substitution or withdrawal of grounds of appeal must be made in the end. That the relief prayed for may kindly be allowed and the order may kindly be quashed, set aside, annulled or modified.”

2.1 The core issue emerged from the above grounds of appeal is that whether in facts & circumstances the Assessing Officer (In short, the ‘AO’) is justified in taxing Rs.1,71,37,274/- which is 20% of cash purchases made in contravention to the provisions of Section 40A(3) of the Income Tax Act, 1961 (In short, the ‘Act’).

3. The relevant facts of the case giving rise to this appeal, in brief, are that the appellant/assessee, a trader of wheat Atta and Maida, filed his Income Tax Return (In short, the ‘ITR’) on 16.10.2016 declaring income of Rs.5,27,430/-. Later on, this case was reopened on the basis of AIR information of huge cash deposits during the relevant year. The appellant/assessee filed his ITR, in response to the notice under section 148 of the Act, on 12.07.2021 declaring income of Rs.5,27,430/- (the income disclosed the original ITR was

also Rs.5,27,430/-). The appellant/assessee had made purchases of Rs.8,56,86,370/- during the relevant year. The AO sought break-up these purchases; credit purchases and cash purchases, which the assessee did not provide; therefore, the AO treated entire purchases as cash purchases made in contravention to the provisions of Section 40A(3) of the Act. Hence, the AO disallowed 20% of purchases of Rs. 8,56,86,370/- and taxed Rs.1,76,64,700/- (20% of Rs.8,56,86,370/-) vide order passed under section 147 r.w.s. 144B of the Act. Aggrieved the appellant/assessee filed appeal before the CIT(A), who disposed of the appeal due to non-prosecution, observing as under:-

“During the reassessment proceedings, the appellant made his submissions which were not found fully satisfactorily. He failed to respond to the show cause notice.

During the appeal proceedings, various notices u/s 250 were issued and as per office record, the following are the dates of notices/ communication with the status of their compliance or otherwise:

Date of notice	Deadline of hearing/ submission fixed as per the notice	Outcome
29/12/2023	04/01/2024	Requested for adjournment. Granted with reduced time.
05/01/2024	11/01/2024	Requested for adjournment. Granted with reduced time.
12/01/2024	18/01/2024	No compliance nor any request for further adjournment.

The conduct of the Appellant, as inferred from the last column of the aforesaid table/evidences that the Appellant is not interested in pursuing the Appeal: the law aids those who are vigilant, not those who sleep upon their rights. This principle is embodied in the well-known latin dictum, "VIGILANTIBUS ET NON DORMIENTIBUS JURA SUB VENIUNT". The conduct of the Appellant, as inferred from the aforesaid table, evidences that the Appellant fails on this principle of equity. Even the Hon'ble Courts, in various

pronouncements, have frowned upon the Appellants who file appeals but thereafter do not take any further interest in prosecuting those appeals.

1. The Hon'ble Income Tax Appellate Tribunal - Kolkata in the case of Pradeep Kumar Jhawar, Kolkata vs. D.C..T., C.C.-XX) (15 March, 2016) (ITA Nos. 450/Kol/2013 for Asst. Year: 2006-07) dismissed the appeal of the Appellant for non-prosecution.

2. The Hon be Madhya Pradesh High Court in the case of Estate of Late Tukojirao Holkar vs. CWT (223 IIR 480) held as under:

"If the party, at whose instance the reference is made, fails to appear at the hearing, or fails in taking steps for preparation of the paper books so as to enable hearing of the reference, the court is not bound to answer the reference."

1. Similarly, the Hon'ble Punjab & Haryana High Court in the case of New Diwan Oil Mills vs. CIT (2008) 296 IT 495) returned the reference unanswered since the assessee remained absent and there was no assistance from the assessee.

2. Their Lordships of Hon'ble Supreme Court in the case of CIT vs. B.Bhattacharjee& Another (118 IT 461 at page 477-478) held that appeal does not mean, mere filing of the memo of appeal but effectively pursuing the same.

In the judgment, their Lordships averred as follows:

".....This turns on the meaning of the words "preferred an appeal". "Preferred" is a word of dual import. Its semantics depend on the scheme and the context; its import must help, not hamper, the object of the enactment even if liberty with language may be necessary. There is good ground to think that an appeal means an effective appeal. An appeal withdrawn is an appeal non est as judicial thinking suggests.

Black's Law Dictionary gives the following meaning: 'PREFER: To bring before; to prosecute; to try to proceed with'. Thus, preferring an indictment signifies prosecuting or trying an indictment. It means to give advantage, priority, or privilege; to select for/first payment, as to prefer one creditor over others. Thus, it may mean prosecute or effectively pursue a proceeding or merely institute it. Purposefully interpreted, preferring an appeal means more than formally filing it but effectively pursuing it....."

In view of the above, it is clear that the Appellant is not aggrieved with the reassessment order impugned herein and is not interested in pursuing the same. Accordingly, the additions/disallowance as challenged in the Grounds of Appeal and in the Appeal Memo are hereby confirmed.”

4. The Ld. Authorised Representative (in short ‘AR’) requested for setting aside the case before the Ld. CIT(A) as the appeal was not decided on the merit of the case. It was submitted that the Ld. CIT(A) had provided three opportunities of being heard with very little time for compliances. Hardly, a week time was given to comply. It was further submitted that the Ld. CIT(A) decided the appeal in less than 20 days from the date of first hearing to the date of order. It was contended that the appellate order made in such haste had overlooked the basic provisions of Section 40A(3) of the Act and Rules 6DD of the Income Tax Rules wherein it was categorically provided that the payments made for agriculture and forest produce were not in the purview of 40A(3) of the Act. Before us, the ld. AR took the plea that the purchases the appellant/assessee made were in the nature of agricultural produce; viz, Aata and Maida which were duly covered by the Rule 6DD(e) of the Income Tax Rules and therefore, the same were beyond the purview of 40A(3) of the Act. Further, it was also submitted that the Ld. CIT(A) had not decided the case on merit and disposed of each and every ground of appeal.

5. The Ld. Senior Departmental Representative (In short, the ‘Sr. DR’), reiterating the facts mentioned in the assessment order and appellate order, submitted that the appellant/assessee had not have a case in his favour because Rules 6DD(e)(i) of Income Tax Rules clearly provide that the payment

should have been made to the cultivator, grower or producer of such articles, produce or products, whereas the appellant/assessee had not brought any material on the record to demonstrate the cash and credit purchases and also that the cash purchases of Rs.8,56,86,370/- had been made only from cultivator, grower or producer. Hence, the appellant/assessee could not qualify for making payment above Rs.20,000/- in cash in aggregate in a day.

6. We have heard both the parties and perused the material available on record. For the sake of convenience of the facts of the case, the relevant Rule 6DD(e) are reproduced as under :-

“ No disallowance under sub-section (3) of section 40A shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-section (3A) of section 40A where a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or [account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as prescribed under rule 6ABBA, exceeds ten thousand rupees] [Substituted 'account payee bank draft, exceeds twenty thousand rupees' by Notification No. G.S.R. 56(E), dated 29.1.2020 (w.e.f. 26.3.1962).] in the cases and circumstances specified hereunder, namely :-

(a)

(b)

(c)

(d)

(e) where the payment is made for the purchase of-

(i) agricultural or forest produce; or

(ii) the produce of animal husbandry (including livestock, meat, hides and skins) or dairy or poultry farming; or

(iii) fish or fish products; or

(iv) the products of horticulture or apiculture, to the cultivator, grower or producer of such articles, produce or products;”

7. From perusal of the appellate order, it is evident that the Ld. CIT(A) has not decided the case on merit and has not given finding on each and every

ground. Hence, in the interest of justice and facts in entirety, we are of the considered view that the appellant/assessee deserves reasonable opportunity of being heard to make shortcomings or non-compliances. In view thereof, without offering any comment on merit of the case, we deem it fit to set aside the impugned order and remit the matter back to the file of the AO for de-novo consideration. The appellant/assessee should ensure compliances during the set-aside proceeding before the AO. The AO is also required to provide reasonable opportunities of being heard to the appellant/assessee before deciding the case on merit.

8. In view of the above observation, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in open Court on 30th July, 2024

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

Sd/-

**(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER**

Dated: 30/07/2024
Binita, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT
4. CIT(Appeals)
5. CIT-DR

ASSISTANT REGISTRAR
ITAT, NEW DELHI