



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

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

ITA No. 12/CTK/2024
Assessment Year :2017-18

Gita Devi Gupta, Pro. M/s. D.D. Textiles, Nandi Sahi, Cuttack	Vs.	DCIT, Assessment Circle 2(1), Cuttack
PAN/GIR No.AAZPG 8154 E		
(Appellant)	..	(Respondent)

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

Date of Hearing : 7/8/2024
Date of Pronouncement : 7/8/2024

ORDER

Per Bench

This is an appeal filed by the assessee against the order of the Id
CIT(A), NFAC, Delhi dated 24.11.2023 in Appeal No. CIT(A),
Cuttack/10488/2019-2020 for the assessment year 2017-18.

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

3. It was submitted by Id AR that three issues are involved in assessee's appeal. The first issue was against the addition made of Rs.1,43,000/- representing the demonetized currency deposited in the assessee's bank account. It was the submission that for the purpose of assisting the bank and public, the assessee used to collect demonetized currency of the poor people and exchange the same in the bank account of the assessee as an employee used to go bank daily. It was the submission that this is a part of the sales of the assessee, which was the exchange of demonetized currency of the poor people so that they did not go and stand in the queue in the bank. It was the submission that the addition made by the AO and confirmed by Id CIT(A) on this issue may be deleted.

4. In reply, Id Sr DR vehemently supported the order of the AO and Id CIT(A). It was the submission that the assessee was not a person authorized to collect the demonetized currency after declaration of demonetization. It was the submission that the assessee was not entrusted such philanthropic duties by the Government. It was the submission that the addition made by the AO and confirmed by Id CIT(A) be confirmed.

5. We have considered the rival submissions. A perusal of the present case clearly shows that the assessee has collected demonetized currency after the demonetization period and the assessee is not an authorised person to collect such notes. This being so, as the assessee has not been

able to prove the source of demonetized currency, the addition as made by the AO and confirmed by Id CIT(A) stands upheld.

6. The second issue was in regard to payment of bogus commission added by the Assessing Officer to an extent of Rs.20,37,437/-. It was the submission that the assessee had paid commission to seven persons whose names and address are also given to the Assessing Officer. It was the submission that the Assessing Officer had issued notice u/s.131 of the Act and all of them had responded and confirmed the receipt of commission against the work of purchase and sale for the assessee supported by copies of their income tax returns where they have disclosed the commission received, copy of their bank account, which showed that they have received commission through banking channel. It was the submission that while paying commission, the assessee had deducted TDS at the specified percentage though the Id CIT(A) says otherwise. It was the submission that no action under section 201(1) of the Act has been raised against the assessee on account of non-deduction of TDS. It was the submission that one of the person Shri R.K.Poddar had also appeared before the AO and his statement was recorded on 5.9.2019 wherein he has confirmed the business with the assessee and the receipt of commission. Ld AR further pointed out that the Id CIT(A) in page 13 at para 9.5 has also noted that in the case of Sh Chagan Lal Baheti, the net commission received was Rs.4,80,804/- as against gross commission received of Rs.12,04,544/- and

out of this Rs.12,04,544/-, the assessee had paid commission of Rs.3,22,100/-. It was the submission that all the recipients of commission have confirmed the receipt of commission, have provided proof of the same, had disclosed the income in their income tax returns and have also paid tax. It was the submission that the addition made is liable to deleted.

7. In reply, Id Sr DR submitted that the Assessing Officer has categorically recorded in the case of Shri Ramesh Kumar Poddar that his personal drawings during the year was Rs.1,44,000/- only whereas total cash withdrawals from bank was Rs.18,80,000/- as against the commission receipt of Rs.20,37,437/-, which clearly showed that monies had been re-routed to the payers of the commission. It was the submission that though there is no dispute to the paper work, the fact remains that the commission payment was bogus.

8. We have considered the rival submissions. A perusal of the facts in the present case clearly shows that the assessee has also shown the sales and purchases in respect of various persons to whom the commission has been paid. The sales/purchases corresponding to the commission paid have not been disputed by the Assessing Officer. In fact, the commission has been paid for the earlier years and subsequent years and the details have been provided, which is as follows:

D.D.TEXTILES								
COMPARATIVE CHART OF COMMISSION PAID AND ACCEPTED BY DEPARTMENT								
F.Y.-2014-2015								
TURNOVER:-47,43,34,004.00								
FY 2014-2015	PAN	COMMISSION	TDS %	TDS	SECTION	CHALLAN NO	CHALLAN DT	BSR CODE
VJAYSINGH BHAWARLAL SANCHETI	ATLPS9879B	1,50,000.00	10%	15,000.00	194 H	00001	17/12/2014	0007049
CHAGANLAL BAHETI	AIEPB7523P	2,39,011.00	10%	23,901.00	194 H			
DILIP KUMAR UDAIPURIA	AAHPU0519M	2,10,847.00	10%	21,085.00	194 H			
PODDAR AGENCIES	AEBPP0414Q	6,32,038.00	10%	63,204.00	194 H	00003	17/04/2015	0007049
VIJAY SINGH BHANWARLAL SANCHETI	ATLPS9879B	1,25,000.00	10%	12,500.00	194 H			
M/S SHIV KUMAR MUSAHIB-HUF	AAQHS7911G	1,00,000.00	10%	10,000.00	194 H	06449	30/04/2015	6360218
TOTAL		14,56,896.00						
F.Y.-2015-2016								
TURNOVER:-56,08,66,248.00								
FY 2015-2016	PAN	COMMISSION	TDS %	TDS	SECTION	CHALLAN NO	CHALLAN DT	BSR CODE
SAURAV VIJAY SANCHETI	GBDPS6576P	225610	10%	22561	194 H	00002	19.03.2016	7049
SANTOSH KUMAR MUSAHIB HUF	AAQHS7910H	215400	10%	21540	194 H	00002	22.03.2016	7049
PODDAR AGENCIES	AEBPP0414Q	1061902	10%	106160	194 H	00001	26.04.2016	7049
DILIP KUMAR UDAIPURIA	AAHPU0519M	229687	10%	22969	194 H	00001	26.04.2016	7049
CHAGANLAL BAHETI	AIEPB7523P	298939	10%	29894	194 H	00001	26.04.2016	7049
TOTAL		2031538						
F.Y.-2016-2017								
TURNOVER:-63,31,61,702.00								
NAME	PAN	COMMISSION	TDS %	TDS	SECTION	CHALLAN NO	CHALLAN DT	BSR CODE
SANTOSH KUMAR MUSHAHIB	AAQHS7910H	256223	5%	12811	194 H	1	19/04/2017	7049
SOURAV BIJAY SANCHETI	GBDPS6576P	226393	5%	11320	194 H	3	27/04/2017	7049
RABINDRA SINGH	BOPPS1999E	120000	5%	6376.9	194 H	32519	29/04/2017	4329
PODDAR AGENCIES	AEBPP0414Q	639644	5%	31982	194 H	4	27/04/2017	7049
DILIP KUMAR UDAYPURIYA	AAIPU6737A	265103	5%	13255	194 H	4	27/04/2017	7049
CHAGANLAL BAHETI	AIEPB7523P	322100	5%	16105	194 H	2	27/04/2017	7049
ANKIT AGARWAL	AICPA2187N	207974	5%	10399	194 H	1	28/04/2017	7049
TOTAL		2037437					DISPUTED	
F.Y.-2017-2018								
TURNOVER:-75,74,76,375.00								
NAME	PAN	COMMISSION	TDS %	TDS	SECTION	CHALLAN NO	CHALLAN DT	BSR CODE
SAURAV VIJAY SANCHETI	GBDPS6576P	110000	5%	5500.00	194 H	06788	06/03/2018	ONLINE PYMT
SANTOSH KUMAR MUSAHIB (HUF)	AAQHS7910H	300759	5%	15000	194 H	00003	29/03/2018	7049
SAURAV VIJAY SANCHETI	GBDPS6576P	452271	5%	22614	194 H	00005	23/04/2018	7049
PODDAR AGENCIES	AEBPP0414Q	842367	5%	42118	194 H	00006	23/04/2018	7049
DILIP KUMAR UDAIPURIYA	AAIPU6737A	407915	5%	20396	194 H	00006	23/04/2018	7049
CHAGAN LAL BAHETI	AIEPB7523P	390184	5%	19509	194 H	00006	23/04/2018	7049
ANKIT AGARWAL	AICPA2187N	55537	5%	2777	194 H	00006	23/04/2018	7049
TOTAL		2559033						
F.Y.-2018-2019								
TURNOVER:-77,06,51,833.06								
NAME	PAN	COMMISSION	TDS %	TDS	SECTION	CHALLAN NO	CHALLAN DT	BSR CODE
PODDAR AGENCIES	AEBPP0414Q	760277	5%	38014	194H	4184	30/04/2019	11352
DILIP KUMAR UDAIPURIYA	AAIPU6737A	338887	5%	16944	194H	4184	30/04/2019	11352
CHAGAN LAL BAHETI	AIEPB7523P	499328	5%	24966	194H	4184	30/04/2019	11352
SAURAV VIJAY SANCHETI	GBDPS6576P	577063	5%	28853	194H	4184	30/04/2019	11352
SANTOSH KUMAR MUSAHIB (HUF)	AAQHS7910H	308634	5%	15432	194H	4184	30/04/2019	11352
MAHADEV AGENCY	AAXPF4490J	50494	5%	2525	194H	4184	30/04/2019	11352
KISHAN DEEPAKBHAI CHHATBAR	BHVPC2073G	84565	5%	4228	194H	4184	30/04/2019	11352
TOTAL		2619248						

9. This coupled with the fact that the commission payments have also been reflected in their returns and the requisite TDSs have also been made and in fact one of the person in respect of whom the commission has been paid, a statement has been recorded and he has admitted that he has received commission, we are of the view that no disallowance on presumption is permissible in respect of commission payments. Consequently, the addition as made by the AO and confirmed by Id CIT(A) in respect of commission payment of Rs.20,37,437/- stands deleted.

10. The next issue was in regard to violation of provisions of Rule 40A(3) to an extent of Rs.1,80,000/-, which was the bonus paid to three of the employees in cash exceeding Rs.20,000/-. Admittedly, the assessee has not been able to prove any reasonable cause for violation of provisions of section 40A(3). Consequently, the addition as made by the AO and confirmed by Id CIT(A) stands confirmed.

11. In the result, appeal of the assessee stands partly allowed.

Order dictated and pronounced in the open court on 07/08/2024.

Sd/-
(Manish Agarwal)
ACCOUNTANT MEMBER

sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 07/08/2024
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Gita Devi Gupta, Pro. M/s.
D.D. Textiles, Nandi Sahi, Cuttack
2. The Respondent: DCIT, Assessment Circle
2(1), Cuttack
3. The CIT(A),NFAC, Delhi
4. Pr.CIT, Cuttack
5. DR, ITAT,
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack

