

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री जगदीश, लेखा सदस्य के समक्ष
BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI JAGADISH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1015/Chny/2024
निर्धारण वर्ष /Assessment Year: 2021-22

Jalitha Jagadeesan,
No.424, Anna Salai,
Pondicherry – 605 001,
Puducherry (UT).
[PAN: AEUPJ 3356G]
(अपीलार्थी/**Appellant**)

Vs. The Asst. Commissioner of
Income Tax,
Circle-1,
Puducherry.

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri D. Anand, Advocate
: Shri ARV Srinivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 18.07.2024

घोषणा की तारीख /Date of Pronouncement

: 10.10.2024

आदेश / **ORDER**

PER JAGADISH, A.M :

Aforesaid appeal filed by the assessee for Assessment Year (AY) 2017-18 arises out of the order of Learned Commissioner of Income Tax, Appeal, Addl/JCIT(A)-1, Lucknow [hereinafter "CIT(A)"] dated 15.03.2024 confirming the adjustment made in the intimation issued by CPC, Bengaluru u/s. 143(1) of the Income-tax Act, 1961 (hereinafter "the Act") on 08.07.2022.

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2. The grounds of appeal raised by the assessee are as under:

"1. The order of the National Faceless Appeal Centre (NFAC), is wrong, illegal and opposed to facts of the instant case.

2. The National Faceless Appeal Centre (NFAC) erred in upholding the disallowance made by the CPC by invoking Section 40A(3) of the Act.

3. The NFAC ought to have seen that Disallowance under section 40A(3) under Sec 143(1) is patently unjust as any disallowance should follow after giving an opportunity as per proviso. In the absence of the same, the order U/S 143(1) is vitiated by the vice of ignoring a legal requirement, which renders the 143(1) order as legally untenable and bad in law.

4. The National Faceless Appeal Centre (NFAC) without appreciating the facts/evidence of the case, confirmed the disallowance made under genuineness of the though Sec.40A(3) of the Act, even payee/ transactions was fully established.

5. The NFAC having not disputed the payment in cash by the appellant to the dealer of IMFL product as genuine ought to have seen that it was not open to the appellate authority to make addition of the same to the returned total income u/s. 40A(3) of the Act.

6. The NFAC ought to have seen that that the appellant is a retailer of IMFL products in Pondicherry and that the Government of Pondicherry by Gazette Notification (G.O. No. 2462-B/DCE/s1/2020-21) dated 24/5/2020 has imposed special excise duty of 25% on the IMFL products. Considering the pandemic situation and the immediate requirement of the dealer to remit the special exercise duty to the excise department to obtain release of goods, the appellant out of business exigency, was constrained to pay the special excise duty in cash to the dealer to be remitted to excise department."

3. The brief facts of the case are that the assessee is a dealer in retail sales of IMFL Liquor in Pondicherry. Assessee has filed her return of income on 04.01.2022 admitting total income of

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Rs.14,13,910/-. The assessee in clause 21(d) of Form-3CD of audit report for disallowances / deemed income u/s 40A(3) has furnished details of cash payment totaling to Rs 89,27,690 not covered u/s. 40A(3) of the Act. The CPC, Bengaluru on the basis of above report has made the adjustment after disallowing cash payment of Rs. 89,27,690/- u/s 40A(3) in the intimation issued u/s 143(1) of the Act. The assessee has filed appeal before Ld. CIT(A), who confirmed the disallowance relying upon the provisions of Section 143(1)(a)(iv) of the Act. The Ld. CIT(A) has noted that the disallowance has been made on the basis of facts furnished by the assessee for the audit and is well within the provisions of Section 143(1)(a)(iv) of the Act. The Ld. CIT(A) has further noted that the cash payment has been done in violation of Section 40A(3) of the Act and the case does not fall under the exception given in Rule 6DD of the Income Tax Rules, 1962 (hereinafter "the Rules").

4. The Ld. Authorized Representative (A.R) of the assessee before us has argued that the details of cash payment in clause (21) in Form 3CD has been furnished by oversight and mistake .The cash payment reported in Form 3CD are all ultimately payments to Government of

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Pondicherry towards the special excise duty on the purchase of liquor and it is mentioned in Form 3CD that the payments are all related to special excise duty, therefore Section 40A(3) of the Act is not applicable. The Ld. AR has submitted that the payment was made during Covid period and the seller insisted on the down payment before release of goods to the retailer and hence, to get permission from the Excise Department to take delivery of the goods payments of special excise duty was made in cash to the seller. The Ld. AR has also submitted that the payment of cash was due to business exigency and compelling circumstances to get goods release for supply and further payment was ultimately made to Pondicherry Government. The Ld. AR has relied on the orders in the case of M/s. Shubh Arya Steel Pvt. Ltd. vs. ACIT in ITA No.1979/Mum/2021 dated 14.06.2022 (Mumbai-Trib.) and Harshdeep Singh Juneja vs. DCIT in ITA No.106/Rpr/2021 dated 29.05.2023 (Raipur-Trib.).

5. The Ld. Departmental Representative (DR), on the other hand, relied on the orders of lower authorities and submitted that the cash payment has been made to private parties which is in violation of Section 40A(3) of the Act and therefore, the order of Ld. CIT(A) is to be confirmed.

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6. We have heard the rival submissions, and perused the materials available on record. The CPC on the basis of clause 21(d) in Form 3CD has made the adjustment in total income by adding the cash payment of Rs. 89,27,690/- as per Section 40A(3) of the Act. The Ld A.R has submitted the copy of receipts issued by whole sellers indicating such payments were made for special excise duty and same has been remitted to excise department on the same day for issue of permit. The Ld. AR submitted that the payments were made during Covid period for special excise duty imposed vide Punducherry Government Order dated 24.05.2020 and therefore payment was to Government and due to business exigency. The Ld AR has also argued that before making adjustment opportunity has not been given as provided in proviso to section 143(1) and drew our attention to the note in intimation where date of such intimation has been left blank. We agree with the submission of Ld AR and therefore set aside the order of Ld CIT(A) and Ld AO . Ld AO is directed to issue fresh intimation after providing proper opportunity and considering submission of assessee.

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

Order pronounced on 10th October, 2024.

Sd/-
(एबी टी. वर्की)
(ABY. T. Varkey)

न्यायिक सदस्य / Judicial Member

चेन्नई/Chennai, दिनांक/Dated: 10th October, 2024.

EDN/-

Sd/-
(जगदीश)
(Jagadish)

लेखा सदस्य / Accountant Member

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF