

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**BEFORE SH. S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SH. SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.692/Del/2023
Assessment Year: 2012-13

Rohit Rastogi 86, Jagriti Enclave, Delhi- 110092 PAN No.AIGPR1260D	Vs	ACIT Central Circle 14 New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	None
Respondent by	Ms. Harpreet Kaur Hansra, Sr. DR

Date of hearing:	18/11/2024
Date of Pronouncement:	22/11/2024

ORDER

PER SUDHIR KUMAR, JM:

This appeal by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)/NFAC-27, New Delhi [hereinafter referred to as "CIT(A)"] vide order dated 16.01.2023 pertaining to A.Y. 2012-13 pertaining to arises out of the assessment order dated 28.12.2019 under section 143(3)/147 of the IT Act, 1961 [hereinafter referred to as 'the Act'].

2. The assessee has raised following grounds of appeal :-

1.1 That on the facts and in the circumstances of the case and contrary to the provisions of law, the learned Commissioner of Income tax (Appeal) has erred in confirmed the addition of Rs. 66,93,000/- u/s 40A(3) made by the learned assessing officer by holding that the said transaction is not covered in exception of Clause (k) of Rule 6DD.

1.2 That the assessment order passed and additions made are arbitrary, illegal, contrary to the letter and spirit of provisions of law. The order passed by the learned Commissioner of Income Tax (Appeal) is bad in law.

1.3 That the learned Commissioner of Income Tax (Appeal) has erred in confirming the addition overlooked the vital facts that the assessee has made payment to the agent through bearer cheque who is required to make payment to sellers for goods or services on behalf of such person. The said transaction was clearly covered by the exception laid down in Rule 6 DD (k) of the LT. Rules, 1962 and was outside the purview of the provisions of Section 40A(3) of the income Tax Act, 1961.

2. That the order passed by the learned Commissioner of Income Tax (Appeal) is wrong on facts and bad in provisions of law.

3. That the appellant craves leave to add, amend, alter, change, vary, substitute or raise any additional ground of appeal if it becomes necessary to do so in the interest of justice at the time of hearing.

3. None appeared on behalf of the assessee. We have heard the Ld. DR and material available on record on record. We decided to proceed with the matter with the assistance of Ld. DR.

4. The brief facts of the case are that the assessee has file his return of income declaring the income at loss of Rs. 3,20834/-for the A.Y. 2012-13 on 23-09-2011. The return of the assessee was processed u/s 143(1) of the Act and accepted. Information was received to the investing wing that the assessee has made the payment in the contravention of the provision of section 40A(3) of the Act. After examining the information, reasons were recorded as per the provision of section 147 of the Act and the administrative approval of competent authority was obtained. The notice u/s 148 of the Act was issued on 29-03-2018. Thereafter notice u/s 143(2) of the Act was also issued. After considering the submission

made by assessee the assessing officer completed the assessment and made the addition of Rs.66,93,000/-u/s. 40A(3) of the Act and assessed the income Rs 6372170/- of the assessee.

5. Aggrieved by the order of the AO, the assessee has filed the appeal before the Ld. CIT(A) who vide his order dated 16-01-2023 dismissed the appeal against which the assessee is in appeal before us. The Ld CIT(A) has observed in his order as under :-

6.8 In view of the above facts and circumstances of the case and further observing that no other material is available on record on the basis of which order of the Assessing Officer can be interfered, the disallowance u/s. 40A(3) of the Act at Rs.66,93,000/- made by the AO appears to be on reasonable basis and therefore, same is confirmed and this ground of appeal is hereby dismissed.

7. Ground No.2 of appeal relates to initiation of penalty proceedings u/s. 271 (1)(c) of the Act. Since, no order imposing the penalty u/s.271 (1)(c) of the Act has been passed, yet this ground of appeal is immature as this stage, hence dismissed.

6. The Ld. DR has vehemently supported the order of the lower authorities. He has submitted that the assessee has

failed to produce the documentary evidence to rebut the view taken by assessing officer

7. We have heard the Ld. DR and perused the relevant material available on record. We find that Ld CIT(A) has rightly dismissed the appeal holding that the assessee has failed to substantiate genuineness of the both scrap agents. The assessee has withdrawn the cash himself, not by the so-called agents. The Ld CIT(A) has rightly dismissed the appeal of the assessee. We do not find any reason to interfere with the findings of the lower authorities. The appeal is liable to be dismissed.

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

Order pronounced in the open court on 22.11.2024.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

NEHA, Sr. PS

Date:-.11.2024

Copy forwarded to:

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

Sd/-
(SUDHIR KUMAR)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI