

आयकर अपीलीय अधिकरण  
दिल्ली पीठ "एस एम सी", दिल्ली  
श्री विकास अवस्थी, न्यायिक सदस्य

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC", DELHI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आअसं.2564/दिल्ली/2023(नि.व. 2018-19)

ITA No.2564/DEL/2023 (A.Y.2018-19)

Narain Dass Talreja, (Through Kishore Talreja LR)

B-206, New Subzi Mandi, Azad Pur,  
Delhi-110033

PAN: ACSPT-4460-B

..... अपीलार्थी/Appellant

बनाम Vs.

Income Tax Officer, Income Tax Department,

National e-Assessment Centre, Delhi

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : S/Shri K.P Ganguly, & Narender Kumar, Advocate

प्रतिवादीद्वारा/ Respondent by : Shri Sanjay Tripathi, Sr. DR

सुनवाई की तिथि/ Date of hearing : 19/09/2024

घोषणा की तिथि/ Date of pronouncement: : 18/12/2024

आदेश/ORDER

**PER VIKAS AWASTHY, JM:**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as 'the CIT(A)') dated 19.07.2023, for assessment year 2018-19.

2. The facts of the case in brief as emanating from records are: The assessee is a commission agent and is engaged in trading of fresh fruits. The assessee filed its return of income for the impugned assessment year declaring income of Rs.9,30,120/-. In the course of assessment proceedings the Assessing Officer (AO) found that in violation of provisions of u/s. 40A(3) of the Income Tax Act, 1961(hereinafter referred to as 'the Act') the assessee has made payment in cash in excess of Rs.10,000/- to a single person and there are several such payments. Hence, he made disallowance u/s. 40A(3) of the Act on following transactions:

(i) Bonus paid to employees in cash	Rs.29,000/-
(ii) Cash payment to Chowkidar	Rs. 18,000/-
(iii) Diwali expenses	Rs.19,350/-
(vi) Phad expenses paid in cash	Rs. 20,000/-
(v) Salary paid to employees in cash	Rs. 11,62,000/-
(vi) Travelling expenses paid in cash	<u>Rs. 1,05,510/-</u>
Total disallowance u/s. 40A(3) of the Act	<u>Rs. 13,53,860/-</u>

The AO further held that the assessee has paid commission to relatives (son) in excess of market rate. Hence, he also made disallowance of Rs.16,81,754/- u/s. 40A(2) of the Act. Aggrieved by the assessment order dated 25.03.2021, the assessee filed before the CIT(A), but remained unsuccessful, hence, the present appeal.

3. The assessee in appeal has assailed findings of the CIT(A) in confirming disallowance u/s. 40A(3) and 40A(2) of the Act. The assessee has filed an application under Rule 11 of the Income Tax (Appellate Tribunal) Rules 1963, raising an additional ground, the same reads as under:-

*“That, the Commissioner of Income Tax (Appeals) Income Tax Department has grossly erred in passing the order against the deceased person who had died on 04.05.2022 and, as such, the order passed by the Id. CIT(A) is null-and void and contrary to the decision of Hon’ble Delhi High Court in the case of Savita Kapila vs. Asst. CIT (2020) 426 ITR 502(Delhi)”.*

4. Shri K.P Ganguly, appearing on behalf of the assessee submits that written arguments have been filed in paper book at pages no. 1 to 8, the same be taken on record and the appeal be decided on the basis of said written submissions. He further referred to the additional ground of appeal and submitted that the CIT(A) has passed impugned order in the name of a dead person, hence, the same is liable to be quashed. To support his argument, he placed reliance on the decision of

Hon'ble Delhi High Court in the case of Savita Kapila vs. Asst. (supra). He further submitted that the additional ground is purely legal and goes to the root of validity of impugned order.

5. Per contra, Shri Sanjay Tripathi representing the department vehemently defended the order of CIT(A) and AO and prayed for upholding the same. In so far as the additional ground is concerned, the Id. DR submits that it is not emanating from records that the Legal Representatives (LR) of the assessee at any point of time during pendency of appeal before the CIT(A) had informed the CIT(A) about death of the assessee Narayan Das. Hence, the CIT(A) has passed order in the name of Narayan Das. The Id. DR opposed admission of additional ground of appeal.

6. Submissions made by Id. DR heard, written arguments furnished by AR of the assessee perused, orders of the authorities below examined and the case laws on which the assessee has placed reliance considered. The assessee has raised an additional ground of appeal challenging validity of impugned order as the same has been passed in the name of a dead person. Narayan Das died on 04.05.2022, i.e. during pendency of First Appeal before the CIT(A). A copy of death certificate is placed on record before the Tribunal at page 46 of the paper book. A photocopy of an affidavit dated 03.01.2024 affirmed by Kishore Talreja son of deceased Narayan Das has also been placed on file. At the outset a query was raised by the Bench as to when CIT(A) was informed regarding the death of Narayan Das. The Id. AR of the assessee could neither furnish any communication from assessee's side informing CIT(A) regarding death of Narayan Das nor in the written arguments submitted before the CIT(A) on 07.07.2023 there is any mention of death of Narayan Das. Thus, it is not emanating from records that assessee had ever informed to the CIT(A), regarding the fact of death of Narayan Das during pendency of first appeal.

Unless the LR's of the assessee inform the CIT(A) regarding death of the assessee it would not be in the knowledge of CIT(A) that the assessee has died. Even before the Tribunal the LRs of assessee have mentioned the name of a dead person in memorandum of appeal in Form 36. The LRs of assessee have been negligent in not intimating the fact of death of Narain Dass to the CIT(A). Therefore, the CIT(A) was oblivious of the facts of death of assessee. I find no merit in the additional ground of appeal raised by the assessee, hence, dismissed.

7. Now, adverting to merits of the additions. The AO has made disallowance u/s. 40A(3) of the Act on multiple counts. The same are considered as under:-

**Payment of Bonus in Cash:-**

7.1. A perusal of assessment order reveals that during the period relevant to assessment year under appeal, the assessee paid cash bonus to six employees. Out of six employees, the assessee has allegedly paid cash bonus in excess of Rs.10,000/- to two employees i.e. Parasram Rs.13,000/- and Kapil Talreja Rs. 16,000/-. Before the AO the assessee had admitted that bonus of Rs.13,000/- in cash was paid to Parasram. Bonus to Kapil Talreja was paid through cheque but it was not an account payee cheque. Extract of bank statement has been reproduced in the assessment order which clearly indicates that a cheque in the name of Kapil Talreja amounting to Rs.16,000/- was issued by the assessee. Considering the fact that cheque was issued in the name of Kapil Talreja and the bank statement of the assessee clearly reflects that the payment has been made by way of cheque, I am of considered view that bonus payment to Kapil Talreja has been wrongly disallowed u/s. 40A(3) of the Act. Hence, disallowance u/s. 40A(3) of the Act in respect of bonus payment is restricted to Rs.13,000/- i.e. to the extent bonus paid to Parsaram in cash.

**Cash payment to Chowkidar:-**

7.2 In so far as cash payment to Chowkidar is concerned, the assessee had made payments to Chowkidar at the rate of Rs.1500/- per month. It is contended that Chowkidar was not having any bank account hence cash payments were made to him every month. However, to claim the expenditure single voucher of Rs.18,000/- was made. Considering the fact that the payment to Chowkidar was made every month, the mandatory condition laid down u/s. 40A(3) of the Act for making disallowance is not made out. Hence, no disallowance in respect of cash payments made to Chowkidar is warranted.

**Diwali expenses in cash:-**

7.3 Disallowance on account of Diwali expenses Rs.41,200/- has been made u/s. 40A(3) of the Act. The details furnished by the assessee regarding Diwali expenses have been reproduced in the assessment order. A perusal of expenditures reveals that the payments have been made on Diwali on following counts:-

Sweets	Rs. 9600/-
Dry Fruits	Rs.9750/-
Puja Items	Rs.1850/-
Pandit Ji	Rs.1700/-
Light Decoration Items	Rs.2400/-
Hizara	Rs.5100/-
Cash to Labours	Rs.8700/-
Total	Rs.41,200/-

A bare perusal of bifurcation of Diwali expenses as noted above would show that no single cash payment is in excess of Rs.10,000/-. Merely for the reason that single voucher was made to claim aforesaid expenditure, in my considered view would not result in violation of provisions of section 40A(3) of the Act, hence no

disallowance u/s. 40A(3) is warranted. The AO has assumed that the assessee had made payment for sweets and dry fruits to a single vendor, hence, made disallowance of Rs.19,350/-. No addition can be made merely on assumptions; there is no document on record to show that payment for sweets & dry fruits was made to same person on same day, hence, disallowance on account of Diwali expenses is deleted.

### **Expenses on Phad:-**

7.4. The assessee has claimed expenditure towards repair of Phad (Platform). The assessee has furnished details of expenditure incurred for repair of Phad. The same has been extracted in the assessment order. A perusal of breakup of expenditure reveals that payment has been made towards cost of labour Rs.8,000/, repair of electrical Rs.2,250/- , installation of fan Rs.6,450/- and miscellaneous expenditure Rs.33,000/-. The AO has raised doubt over the payment of labour charges Rs.8,000/-stating it to be excessive. The disallowance has been merely made on surmises and conjectures. In any case disallowance of Rs.8,000/- cannot be made u/s. 40A(3) of the Act as the payment in cash is less than Rs.10,000/-. No disallowance u/s. 40A(3) of the Act can be made merely for reason that the expenditure is excessive or the payments made to different persons (less than Rs. 10,000/- to each one of them) has been claimed in single voucher.

### **Payment of Salary:-**

7.5. The assessee has claimed expenditure on payment of salary Rs.11,64,000/-. The details of cash payments to various employees furnished by the assessee before the AO is as under:-

Name	Amount
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Shinu	24000.00
Apanna	25000.00
Rajesh	30000.00
Shrivastav	2000.00
Ahmad	84000.00
Chatrumal	60000.00
Jairam	96000.00
Jaswant	84000.00
Kali Prasad	100000.00
Kapil	176000.00
Madhu	237000.00
Parasram	156000.00
Sukhdev	90000.00
Total	1164000.00

The AO made disallowance of cash payment of salary u/s.40A(3) of the Act wherever the payments are in excess of Rs.10,000/- and thus made disallowance of Rs.11,62,000/-. The contention of the assessee is that the assessee is a trader of fresh fruits mainly in mangos. The mangos are received from rural area of Vijayanagram (Andhra Pradesh) from April to June. During this period the assessee stay over there for a long time and has to hire local staff. Since, local staff belongs to rural area they insist on cash payments, hence, cash payments are made to them. Otherwise, salary to the most employees is given through cheques. No material was placed by the assessee before the AO to substantiate that cash payment of salary to aforesaid persons were made at Vijayanagram or aforesaid persons were resident of Vijayanagram and were not having bank accounts. The AO had made disallowance on the ground that it is not clear from records as to whom the payments were made. The provisions of section 40A(3) are very specific. Disallowance can be made u/s. 40A(3) of the Act only if cash payment or aggregate of cash payments in excess of Rs.10,000/- is made to a person on a single day. I find no reason to interfere with findings of the AO and the CIT(A) on this issue. Thus, disallowance on account of cash payment of salary u/s. 40A (3) of the Act is upheld.

**Travel expenditure in cash:-**

7.6. The assessee has claimed travel expenditure of Rs.1,14,560/-. The AO disallowed expenditure to the extent of Rs.1,05,510/-. Details of travel expenditure were furnished to the AO by the assessee. A perusal of the same reveals that the expenditure is primarily towards boarding, lodging, food, train tickets, taxi fare etc. I find that disallowance u/s. 40A(3) of the Act on account of travel expenditure is unwarranted, hence, the same is directed to be deleted.

7.7. Thus, disallowance u/s. 40A(3) of the Act is restricted to Rs.11,75,000/-. The ground no. 1 of appeal is partly allowed.

8. The Assessing Officer further made disallowance u/s. 40A(2) of the Act on account of payment of excess commission to the relative i.e. son. I find that the Assessing Officer has made disallowance merely on estimations. The disallowance under provisions of u/s. 40A(2) of the Act can be made by the AO, where in his opinion excessive or unreasonable payments having with regard to fair market value of goods, services or facilities is made to the relative of the assessee, if assessee is an individual. A bare perusal of assessment order and impugned order reveals that the authorities below have not determined the fair market value of goods/services. The disallowance has been made merely on the basis of comparative commission payments made by the assessee to his son and his brother. As per section 2(41) of the Act, brother and son both fall within the definition of relative. Hence, the AO has erred in coming to conclusion that excessive payments were made to son without referring to fair market value. Further, the AO has failed to examine comparative nature of services rendered by/goods sold to the son and brother. Thus, the AO has erred in not applying the

provisions of section 40A(2) of the Act correctly. Ergo, disallowance made u/s. 40A(2) is deleted.

The assessee succeeds on ground no. 2 of appeal

9. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on Wednesday the 18<sup>th</sup> day of December, 2024.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

दिल्ली/Delhi, दिनांक/Dated 18/12/2024

**NV/-**

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

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