

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI PARESH M. JOSHI, JUDICIAL MEMBER

ITA No.309/IND/2024
Assessment Year:2017-18

Khandwa Industries Pvt. Ltd., G-2 Amans Corner, 301, Goyal Vihar, Indore	<u>बनाम/</u> <u>Vs.</u>	ACIT, Khandwa
(Assessee/Appellant)		(Revenue/Respondent)
PAN: AADCK4103G		
Assessee by	Shri Soumya Bumb, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	11.03.2025	
Date of Pronouncement	21.03.2025	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by order of first appeal dated 09.02.2024 passed by learned Commissioner of Income-Tax (Appeals)-Addl/JCIT (A)-12, Mumbai ["CIT(A)"] which in turn arises out of assessment-order dated 20.12.2019 passed by learned DCIT/ACIT, Khandwa ["AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2017-18, the assessee has filed this appeal on following grounds:

"1. On the facts and circumstances of the case and in law the learned Commissioner of Income tax (Appeals) erred in confirming the addition amounting to Rs. 4139084/- under Section 40A(2)(b) of the Act. The Appellant prays the said arbitrary disallowance be directed to be deleted.

2. The CIT(A) failed to appreciate and ought to have held that the AO has not perused the audit report correctly and neither questioned the reasonableness of purchase from related party. Accordingly, the Appellant prays that the said disallowance be directed to be deleted."

2. The background facts leading to present appeal are such that the assessee-company filed return of income of AY 2017-18 declaring a total income of Rs. Nil (with a claim of carry forward of loss at Rs. 3,85,39,235/-). The case was selected for scrutiny and the AO issued notices u/s 143(2)/142(1) which were complied by assessee. Ultimately, the AO completed assessment u/s 143(3) after making two additions, namely (i) addition of Rs. 1,96,59,655/- on account of suppression of sales and (ii) disallowance of Rs. 41,39,084/- u/s 40A(2). Aggrieved, the assessee carried matter in first-appeal whereupon the CIT(A) deleted the addition on account of suppression of sales but upheld the disallowance u/s 40A(2). Still aggrieved, the assessee has come in next appeal before us.

3. The sole issue involved in present appeal is the disallowance of Rs. 41,39,084/- u/s 40A(2) made by AO and upheld by CIT(A).

4. At first, we extract the order passed by AO in this regard:

"(ii) Disallowance u/s 40A(2)(b):- Further auditor in Form 3CD at column no. 23 have furnished the particulars of any payment made to persons specified u/s 40A(2)(b) that includes purchases made from Gupta Trading Co., an associated concern, at Rs. 41,39,084/- whereas in the P&L a/c of ITR has been shown NIL; please explain the nature of purchases and furnish ledger of purchases along with bills of purchases. Failure to which same will be

treated as bogus expenditure and the same will be added to your total income. In his reply uploaded on 19.12.2019, the assessee has mentioned that in this connection we hereby draw your kind attention that the assessee company had neither purchased any goods nor sale any unit in the open market. Further we would like to draw your kind attention that the clarification you require is pertaining to the F.Y. 2015-16 Tax Audit Report. The contention of the assessee is misleading because the auditors have clearly mentioned in the audit report the details of payments made to persons specified u/s 40A(2)(b). Therefore, amount of Rs. 41,39,084/- is disallowed as assessee failed to furnish any proof of purchases. The same is added to the total income of the assessee. Penalty proceedings u/s 270A are hereby initiated for under reporting of income."

5. Now, we extract the order passed by CIT(A) reading as under:

"Ground No. 1.5 & 1.6 - The appellant has contended that the AO has erred in viewing the TAR pertaining to previous year i.e. A.Y. 2016-17 and made a disallowance of Rs. 41,39,084/-.

In this regard, the assessment order was perused and it was observed by the AO that the appellant had made purchases from an associated concern (Gupta Trading Co.) at Rs. 41,39,084/-. The AO contends that in the P/L account of ITR the column has been shown as Nil.

In order to verify the veracity of the claim of the appellant, the ITR of A.Y. 2017-18 was downloaded from CPC 2.0. The following was observed relating to Section 40A(2)(b):

40A(2)(b).f

9 Amounts debited to the profit and loss account, to the extent disallowable under section 40A			
a	Amounts paid to persons specified in section 40A(2)(b)	9a	0
b	Amount paid otherwise than by account payee cheque or account payee bank draft under section 40A(3) - 100% disallowable	9b	0
c	Provision for payment of gratuity [40A(7)]	9c	0
d	any sum paid by the assessee as an employer for setting up or as contribution to any fund, trust, company, AOP, or BOI or society or any other institution [40A(9)]	9d	0
e	Any other disallowance	9e	0
f	Total amount disallowable under section 40A (total of 9a to 9e)	9f	0

From the above table, it is observed that the appellant had not mentioned Nil purchase made from its associated concern. Secondly, the ITR relating to A.Y. 2016-17 (previous years) was also downloaded from CPC 2.0 and the following was observed.

9 Amounts debited to the profit and loss account, to the extent disallowable under section 40A			
a	Amounts paid to persons specified in section 40A(2)(b)	9a	0
b	Amount in excess of twenty thousand rupees paid to a person in a day otherwise than by account payee cheque or account payee bank draft under section 40A(3) - 100% disallowable	9b	0
c	Provision for payment of gratuity [40A(7)]	9c	0
d	any sum paid by the assessee as an employer for setting up or as contribution to any fund, trust, company, AOP, or BOI or society or any other institution [40A(9)]	9d	0
e	Any other disallowance	9e	0
f	Total amount disallowable under section 40A (total of 9a to 9e)		

It was observed from the ITR of A.Y. 2016-17 that the appellant had made Nil payments to associated concern.

Therefore, the contention of the appellant that the AO has extracted the figure of **41,39,084/-** from the ITR of A.Y. 2016-17 is false and misleading.

The submission made by the appellant that the AO had erroneously made the addition of Rs. 41,39,084 on the basis of tax audit report of A.Y. 2016-17 (F.Y. 2015-16) is a false narrative.

Therefore, there is no reason to interfere with the addition of Rs. 41,39,084/- made by the AO which has been made on examination of materials on record.

In view of these grounds no. 1.5 & 1.6 are dismissed."

6. Ld. AR for assessee firstly referred AO's order reproduced above and made a straight forward submission that the AO has made addition on the footing that in Form No. 3CD (Tax Audit Report) at Column No. 23, the auditors have furnished the particulars of payments made to persons specified u/s 40A(2)(b) which includes purchase of Rs. 41,39,084/- from M/s Gupta Trading Co. Ld. AR immediately carried us to the copy of Form No. 3CD of preceding AY 2016-17 to demonstrate that the impugned purchase of Rs. 41,39,084/- from M/s Gupta Trading Co. was reported by auditors in Form No. 3CD of preceding AY 2016-17. He submitted that there is no Form No. 3CD of current AY 2017-18 since there was no requirement of tax audit because the turnover of assessee was less than prescribed limit for audit. He referred the Balance-Sheet of assessee of current AY 2017-18 and explained that the same was audited by statutory auditors for the purpose of Companies Act since the assessee is a company but, however, there was no tax audit done and consequently no form No. 3CD. Ld. AR submitted that there was in fact no purchase made by assessee from M/s Gupta Trading Co. during the previous year relevant to current AY 2017-18 under consideration. Thus, by means of these submissions, Ld. AR demonstrated that the AO has picked the Form No. 3CD of preceding AY 2016-17 and taken the impugned purchase of Rs. 41,39,084/- therefrom for making disallowance u/s 40A(2).

7. Then, Ld. AR referred the CIT(A)'s order re-produced above to explain that the CIT(A) has gained a wrong understanding to uphold the AO's action.

He submitted that the CIT(A) has extracted the ITRs of assessee for current AY 2017-18 and preceding AY 2016-17 and observed that the assessee has mentioned "Nil" in both ITRs against sub-item No. (a) of Item No. 9 relating to *"Amounts paid to persons specified in section 40A(2)(b)"*. Ld. AR submitted that the heading of Item No. 9 of ITRs reads as *"Amounts debited to the profit and loss account, to the extent disallowance under section 40A"*. Therefore, the details in sub-item No. (a) of Item No. 9 of ITRs are required to be given *only to the extent of amount disallowable u/s 40A(2)* i.e. the amount in excess of fair market value of goods purchased. Ld. AR went on explaining that in current AY 2017-18, there was no Form No. 3CD (and there was no purchase also from M/s Gupta Trading Co.), therefore the assessee reported "Nil" in ITR of current AY 2017-18. Further, in preceding AY 2016-17, there was Form No. 3CD in which the auditors reported the particulars of payments made to persons specified u/s 40A(2)(b) irrespective of whether there is any disallowable portion or not but in ITR, the assessee has to report only disallowance portion out of such payment. Since there was no disallowable portion, the assessee reported Rs. Nil in sub-Item (a) of Item No. 9 in preceding AY 2016-17. However, the CIT(A) has not understood these technical aspects and made a wrong conclusion just by comparing ITRs of two years. He submitted that the CIT(A) has not taken in account that there was no Form No. 3CD in current AY 2017-18 and the AO has wrongly referred to the Form No. 3CD of preceding AY 2016-17.

8. Finally, Ld. AR summed up his contention by stating that there was no Form No. 3CD of current AY 2017-18 before AO; the AO has wrongly picked a Form No. 3CD of preceding AY 2016-17 and made addition in current AY which is abruptly wrong and unsustainable.

9. Replying to this, Ld. DR for revenue only relied upon orders of lower authorities but, however, could not controvert the submissions of Ld. AR.

10. We have considered rival contentions of both sides and perused the orders of lower-authorities as well as the material held on record to which our attention has been drawn. Admittedly, the AO has made impugned disallowance by stating "*Further auditor in Form 3CD at column no. 23 have furnished the particulars of any payment made to persons specified u/s 40A(2)(b) that includes purchases made from Gupta Trading Co., an associated concern, at Rs. 41,39,084/-....*". But the assessee categorically claimed before AO "*Further we would like to draw your kind attention that the clarification you require is pertaining to the F.Y. 2015-16 Tax Audit Report.*" Even before us, the assessee has filed copy of Form No. 3CD of F.Y. 2015-16 and successfully demonstrated that it was the F.Y. 2015-16 relevant to preceding AY 2016-17 in which the auditors made reporting of purchase of Rs. 41,39,084/- from M/s Gupta Trading Co. u/s 40A(2)(b). Further, the Ld. AR has loudly narrated in open court that there was no Form No. 3CD in current AY 2017-18 as there was no tax audit. Ld. DR for revenue is not able to controvert these categorical claims of assessee. Thus, it is quite clear that the AO has picked Form No. 3CD of wrong year and made addition in current year. Being so, we have no

hesitation in concluding that the impugned disallowance made in current year is wrong/baseless and cannot be sustained. In that view of matter, we delete the disallowance made by AO. The assessee succeeds in this appeal.

11. Resultantly, this appeal is allowed.

Order pronounced in open court on 21/03/2025

Sd/-

(PARESH M. JOSHI)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 21/03/2025

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore