

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE

BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER AND
SHRI LALIT KUMAR, JUDICIAL MEMBER

ITA No.1461/Bang/2015
Assessment years : 2009-10

Shri. Satish Kumar, No. 76/A, 2 nd Cross, 2 nd Main, WOC Road, 2 nd Phase, Manjunathnagar, Bangalore-560010. PAN:BADPS4634J	Vs.	Income Tax Officer, Ward 8(3), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri. H. Guruswamy, ITP
Revenue by	:	Shri Kamaladhar, Standing Counsel

Date of hearing	:	21.12.2016
Date of Pronouncement	:	23.12.2016

ORDER

Per Lalit Kumar, Judicial Member

The present appeal is arising out of the order of the CIT(A) passed on
28.09.2015.

2. The grounds raised in the appeal are as under:
 1. The impugned Appellated order dated 28-09-2015 passed by the Learned CIT(A), Bangalore - 2 is opposed to law, facts and circumstances of the case.
 2. The Learned CIT(A) has erred in dismissing the Appeal of the Appellant without appreciating the facts and circumstances of the case.
 3. The Id. CIT(A) has erred in holding a sum of Rs. 18,49,539/- as income of the Appellant for the alleged contravention of Section 40A(3) of the Act without appreciating the fact that the Appellant as covered under New Rule 6DD of the I.T. Rules as contemplated under Notification No. 97/2008, dated 10-10-2008.
 4. The Learned CIT(A) has erred in confirming the addition of Rs.18,49,539/- without appreciating the facts that the provision of section 40A(3) is not applicable since the payees are identifiable and the transaction was found to be genuine.
 5. The Learned CIT(A) has erred in confirming the addition of Rs.18,49,539/- without appreciating the fact that the Id. AO has allowed the Appellant claim for the A.Y.2008-09 in respect of the payments made in excess of Rs.20,000/- to the same parties to whom a similar cash payment was made for the A.Y. 2009-10.
 6. The Learned CIT(A) has erred in not appreciating the fact that the Appellant has made the payments to the Agents to facilitate the

cash payments to the farmers from whom the Potatoes being the Agricultural Product was purchased.

3. Briefly, the facts of the case are:

The assessee is engaged in the business of purchase and sale of potatoes at APMC Yard, Yeshwanthpur, Bangalore. The appellant had filed his return of income for the Assessment Year 2009-10 on 30.07.2009 and the case of the assessee was selected for Scrutiny Assessment. The Assessing officer has determined the income of the assessee to the tune of Rs.20,13,009/- by making an addition of Rs.18,49,539/- being the disallowance u/s. 40A(3) of the Act in respect of the cash payments made to the agents .

4. Feeling aggrieved by the order passed by the AO, the assessee filed the appeal before the CIT(A) and the CIT(A) has also confirmed the order passed by the learned AO. The reasoning of the learned CIT(A) is as under:

“I have carefully considered the appellant’s contentions and submissions, which are only an elaboration of the grounds of appeal. The appellant has drawn attention to Rule 6DD introduced with effect from the assessment year 2009-10 vide Notification No.97/208 dated 10.10.2008 of the Central Government. Along with the written submissions, the appellant has enclosed a copy thereof. Rule 6DD and Clause (K) read as under:

6DD. No. disallowance under sub-section 40A shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-section (3A) of section 40A where a payment aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees in the cases and circumstances specified hereunder, namely:

(k) where the payment is made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person;

Evidently the clause (k) does not apply as the payment is made, to a trader and not to an agent of the appellant as is referred to in the said clause (k). As regards applicability of clause e(i) of the Rule 6DDj, this is applicable only if the payment is made to a producer / or agriculturist. In case of a Commission agent, the payment should be to a Kachcha Arahtia who is the only commission agent to be excluded and not to a Pakka Arahtia. In this case, the appellant is unable to show that the said payee is a Kachcha Arahtia. The Bangalore ITAT in the case of Sri Renukeshwara Rice Mills V ITO (2005) 93 ITD 263 have clearly distinguished the position of a Kachcha Arahtia and a Pakka Aratia. In the present case, the appellant is not eligible for the benefit of exclusions for Section 40A(3) as provided in Rule 6DD. Also, Circular 34 of CBDT 05-03-1970 is applicable. The disallowance made by the AO is in order and is upheld.”

5. Against the said order, the assessee is in appeal before us. At the outset, the learned counsel for the assessee has submitted that in the previous year, the same AO had allowed the cash payment made to these very persons treating them to be agents and further he has drawn our attention to circular issued by the CBDT dated 10.10.2008. The clause ‘k’ of the said circular at page 38 of the paper book provides “*where the payment is made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person*”

6. On the basis of this clause it was submitted that the case of the appellant is covered by the said clause and therefore no disallowance can be made by the revenue.

7. It was further contended that the facts of the present case are similar to the facts of the case decided by this Tribunal in the appeal bearing ITA No.1146/Bang/2015. The Id Counsel has drawn our attention to paragraph 6 of the said order which reads as under:

“We have heard the rival submissions as well as considered the relevant material on record. There is no dispute that the assessee made payment of cash to the extent of Rs.1,18,27,709 towards agricultural produce. It is also not in dispute that the payment in question was in excess of Rs.20,000/-. The Assessing Officer invoked the provisions of Section 40A(3) in respect of the payment of Rs.75,39,305/- which was made in cash by the assessee to the person other than agriculturists. The assessee contended before the authorities below that the said payment was made to the commission agents working under APMC and therefore the said payment was to be disbursed by these agents to the agriculturists/farmers and consequently the Rule 6DD(k) is applicable in respect of the same. We find that neither the CIT (Appeals) nor the Assessing Officer has examined the issue in the light of the provisions of Rule 6DD(e) & (k) which reads as under:

“6DD(e) where the payment is made for the purchase of—

- (i) Agricultural or forest produce; or*
- (ii) The produce of animal husbandry (including livestock, meat, hides and skins)*
- (iii) Fish or fish products; or*
- (iv) The products of horticulture or apiculture,
To the cultivator, grower or producer of such articles, produce or products;*
- (f).....*
- (g)....*
- (h)....*
- (i)....*

(j).....

(k) *Where the payment is made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person;*

It is not in dispute that the payment was made towards the purchase of agriculture products however, the only disputed fact required to be verified is whether the payment in question which was disallowed by the Assessing Officer under Section 40A(3) is made to the commission agent and was to be finally disbursed to the agriculturists/farmers as per clause (k) of Rule 6DD. From the details furnished by the assessee it appears that these payments in question was made to the commission agents however, it is a matter of enquiry to find out whether this payment was towards procurement of the agriculture products by the assessee from the stock of these agents or it was only a transaction of purchase and sale through these commission agents between the assessee and agriculturists. If the transaction is purchase and sale of agriculture products from agriculturists through the commission agents, then such transaction falls under Rule 6DD(e) & (k) of the I. T. Rules. Accordingly, we set aside this issue to the record of the Assessing Officer to conduct a necessary enquiry for a limited purpose to find out the real nature of transaction and whether the payment made by the assessee to the agents was finally to be disbursed to the agriculturists/farmers. Needless to say the assessee should be given an appropriate opportunity of hearing before passing the final order.”

8. On the basis of the above said argument it was submitted by the learned counsel that the case of the appellant may kindly be restored back to the AO for deciding the issue afresh in the light of the circular as well as the judgment of the coordinate bench:

9. On the other hand, the learned DR for the revenue has relied upon the order passed by the AO and CIT(A) and it was contended that despite the opportunity granted by the authorities below, the assessee has failed to prove how the circular is applicable to the present set of facts.

10. We have heard the rival contentions and perused the record. In our view, the appeal of the assessee is required to be allowed and one more opportunity is required to be given to the assessee to prove that the transaction transacted between the assessee and 7 traders viz., M/s. Suresh Traders, Sri. V. D. Rangaswamy, M/s. Ramesh Kumar Trading Co., M/s. Siddeshwara Trading Co., M/s. Sandy Traders, Sri. Kenchappa and M/s. Akhita Traders, in the nature of the principal agents and for that the payment was necessitated on account of the requirement to make the payment in cash for purchase of goods on his behalf by the said persons. It is made clear that if the assessee is able to establish the relationship of the principal agent between the traders and itself vis-à-vis the agriculturist, then in our view eventually the transaction would fall within the realm of rule 6DD (e & k) of the IT Rules referred herein above. Accordingly, we set aside this issue to the record of the AO to conduct the enquiry in the light of the observations made herein above and find out the relationship between the assessee and the said 7 traders viz., M/s. Suresh Traders, Sri. V. D. Rangaswamy, M/s. Ramesh Kumar Trading Co., M/s. Siddeshwara Trading Co., M/s. Sandy Traders, Sri. Kenchappa and M/s. Akhita Traders and further to find out the cash payment was necessitated on account of requirement as submitted by the assessee.

11. In the result, the appeal filed by the appellant is allowed for statistical purposes.

Pronounced in the open court on this 23rd day of December, 2016.

Sd/-
(A. K. GARODIA)
Accountant Member

sd/-
(LALIT KUMAR)
Judicial Member

Bangalore.
Dated: 23rd December, 2016.

/NS/

Copy to:

1. Appellants
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.