

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिक सदस्यकेसमक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 350/Mds/2013

निर्धारण वर्ष /Assessment year : 2009-2010.

M. Kannappan,
18C3, Warners Road,
Contonment,
Tiruchirapalli 620 001.

Vs. The Assistant Commissioner
of Income Tax,
Range III,
Tiruchirappalli 620 001.

**[PAN AJHPK 1227D]
(अपीलार्थी/Appellant)**

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. S. Sridhar, Advocate
प्रत्यर्थी की ओर से /Respondent by : Shri. Durai Pandian, JCIT.

सुनवाई की तारीख/Date of Hearing : 02-08-2016

घोषणा की तारीख /Date of Pronouncement : 10-08-2016

आदेश / O R D E R

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The appeal filed by the assessee is directed against order of the Commissioner of Income-tax (Appeals), Tirucirapalli, in ITA No.384/11-12, dated 21.12.2012 for the assessment year 2009-2010

passed u/s.143(3) and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

2. The assessee has raised the following concise grounds of appeal.

- 1) *The CIT(A) erred in not considering the correctness of the disallowance of Rs.9, 18,097/- on the application of section 40(a)(ia) in the computation of taxable income without assigning proper reasons and justification.*
- 2) *The CIT(A) erred in sustaining the disallowance of Rs.7,40,250/- on the application of section 40A(3) of the Act in the computation of taxable income without assigning proper reasons and justification.*
- 3) *The CIT(A) erred in partly sustammg the disallowance of salary payments in the computation of taxable income without assigning proper reasons and justification*

3. The Brief facts of the case are that the assessee is in the business of manufacturer of fertilizer and proprietor of M/s. Kannappa Corporations, Trichy and M/s. Ganga Cauvery Fertilizers Corporation, Salem. The Return of Income was filed on 12.10.2009 with total income of ₹61,65,060/- and the Return of income was processed u/s.143(1) of the Act and subsequently the case was selected for scrutiny under CASS and notice u/s.143(2) of the Act was issued. In compliance to notice, the Id. Authorised Representative of assessee appeared from time to time and produced Books of accounts and other evidences as called for. The Id. Assessing Officer found on

verification of evidence that the assessee has claimed lorry freight expenses ₹52,60,281/- in financial statements and no TDS was deducted and Breakup of expenses statement was furnished. On perusal, the Id. Assessing Officer found some of the payments exceeded ₹50,000/- and no TDS were made and the Id. Assessing Officer relied on the provisions of Sec. 40(a)(ia) of the Act for non deduction of TDS and disallowed Lorry freight charges of ₹9,18,097/-. Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

3.1 In the appellate proceedings, the Id. Commissioner of Income Tax (Appeals) has confirmed the addition of the Id. Assessing Officer. Aggrieved by the order of the Commissioner of Income Tax (Appeals) the assessee assailed an appeal before Tribunal.

3.2 Before us, the Id. Authorised Representative explained that the assessee has incurred expenses towards payment of freight charges to lorry owners and further single lorry freight payment does not exceed more than ₹50,000/- per lorry and these aggregate payments pertaining to five trucks during the financial year 2008-09 and there is no agreement between truck owners and assessee and provisions of Sec. 40(a)(ia) of the Act shall not apply and therefore payments are not liable for TDS and prayed for allowing the appeal.

3.3 Contra, the Id. Departmental Representative relied on the findings of the Commissioner of Income Tax (Appeals) order and opposed to the grounds.

3.4 We heard the rival submissions, perused the material on record and provisions of law. The contention of the Id. Authorised Representative that no TDS was deducted as the payment does not exceed more than ₹50,000/- per lorry and the amount disallowed by the Id. Assessing Officer pertaining to five trucks. The Id. Assessing Officer relied only on the Application of Provision of sec 194(C) (5) of the Act as the payments in respect of lorry freight exceeded more than ₹50,000/- and no TDS was deducted on the said payments are disallowed u/s.40(a)(ia) of the Act. We perused the provisions of Sec. 194C(6) of the Act which are relevant to the present case

“(6) No deduction shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor during the course of business of plying, hiring or leasing goods carriages, on furnishing of his Permanent Account Number, to the person paying or crediting such sum.

(7) The person responsible for paying or crediting any sum to the person referred to in sub-section (6) shall furnish, to the prescribed income-tax authority or the person authorized by it, such particulars, in such form and within such time as may be prescribed”.

On applying the above provisions of law, the Id. Assessing Officer should be furnished with Permanent Account Number of lorry owners, which is mandatory requirement for not deducting of TDS and further the Id. Commissioner of Income Tax (Appeals) order does not refer the said provision, considering the apparent facts, provisions of law, we are of the opinion that the Id. Assessing Officer has to examine the nature of expenditure and provisions under 194C(6) of the Act and collect information of lorry owners and pass the order on merits after providing adequate opportunity of being heard to the assessee. The ground of the assessee is allowed for statistical purpose.

4 The next ground raised by the assessee that the Id. Commissioner of Income Tax (Appeals) erred in sustaining the disallowance of ₹7,40,252/- by applying the provisions of Sec. 40A(3) of the Act on account of fuel expenses.

4.1 In the assessment proceedings, the Id. Authorised Representative explained that payments are made in respect of fuel expenses which are below ₹20,000/- on various dates to three persons and the said amount was not paid to single person. But the Id. Assessing Officer alleged that the aggregate amount of ₹7,40,252/- was paid in cash. These fuel expenses are paid to poor farmers and

reflected in the Financial statements and the aggregate payments pertains to five to six consignment. The cash payments are made to purchase country coal from farmers and villagers as same was necessary for running gassifier which generates heat in production purposes. The country coal is prepared by famers in dry district like Ramnad and Sivagana using Prosopis trees (locally known as Kattu karuvel) which grows in all barren lands. The farmer fell the trees and make them into logs, heap them into a cone and put subdued smoke firing to obtain country coal. Further, to promote and help poor farmers in these dry districts of Tamil Nadu, for their livelihood, the Govt. is not imposing any sales tax on country coal. The coal is produced by small farmers and the traders collect this country coal from farmers and supply to the assessee. The poor farmer do not have bank accounts. Further, there are very few organized sectors (As NGO cooperatives) who collect country coal from these farmers and sell it to assessee and in organised cooperative suppliers the assessee make payments by cheques as these society have bank accounts. But these small group of farmers do not have any bank accounts and hence the assessee mandatorily make cash payments. The availability of country coal is limited and also restricted during rainy seasons and that the country coal is the only source for producing combustibile gas as alternative source are very expensive for

production. The Id. Assessing Officer verified the contentions of the assessee and the payments made to poor farmers who do not have bank accounts, where out of total payment of ₹46,17,022/-, the Id. Assessing Officer found the violation of provisions of Sec. 40A(3) and disallowed ₹7,40,250/-. Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

4.2 In the appellate proceedings, the Id. Commissioner of Income Tax (Appeals) has confirmed the addition of the Id. Assessing Officer. Aggrieved by the order of the Commissioner of Income Tax (Appeals) the assessee assailed an appeal before Tribunal.

4.3 Before us, the Id. Authorised Representative submitted that the Id. CIT(A) erred in confirming the findings of the Id. Assessing Officer and failure to consider the factors of banking facilities and cash payments fall within exception of Rule 6DD of the Act and prayed that the disallowance are not warranted as the local farmers always insist for cash payments. Further most of the supply are illiterate and farmers who do not have bank account and assessee purchase country coal from farmers who are in the habit of supplying and selling the products at the work site of the assessee and moving from place to place and does not have any permanent place of business and Deal

only on cash basis. Further educating the farmers for opening of bank account and make Bank payments is highly impractical. Considering time and place of work in rural areas and it is a regular phenomenon faced by the assessee and due to Business exigencies and the cash payment transactions are unavoidable and some transactions also take place on public holiday, Saturday and Sunday. The assessee has been maintaining sufficient bank balance as per Books of account but because the recipient a small farmers who does not have bank accounts and question of issuing of cheques does not arise and prayed for allowing the ground.

4.4 Contra, the Id. Departmental Representative relied on the order of Commissioner of Income Tax (Appeals) and vehemently opposed the grounds.

4.5 We heard the rival submissions, perused the material on record. The contention of the Id. Authorised Representative that the assessee has to compulsory make cash payments due to Business exigencies and maximum transactions are entered with small farmers for supply of country coal who are also illiterate people. Further, the commercial transactions with Bank is not appreciated by above farmers and insist cash immediately and shall move from place to place. The assessee has considered business exigencies and such

cash payments were to be made in a peculiar situations and were mandatory insist cash. We perused the provisions of Sec. 40A(3) of the Act read as:-

‘Where the assessee incurs any expenditure in respect of which a payment of 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, no deduction shall be allowed in respect of such expenditure’.

and Rule 6DD and exception under Income Tax Rules

No disallowance under sub-section (3) of 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 payment⁵⁹ or 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 :—

- (a) where the payment is made to—
 - (i) the Reserve Bank of India or any banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);
 - (ii) the State Bank of India or any subsidiary bank as defined in section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959);
 - (iii) any co-operative bank or land mortgage bank;
 - (iv) any primary agricultural credit society or any primary credit society as defined under section 56 of the Banking Regulation Act, 1949 (10 of 1949);
 - (v) the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956);
- (b) where the payment is made to the Government and, under the rules framed by it, such payment is required to be made in legal tender;
- (c) where the payment is made by—
 - (i) any letter of credit arrangements through a bank;

- (ii) a mail or telegraphic transfer through a bank;
- (iii) a book adjustment from any account in a bank to any other account in that or any other bank;
- (iv) a bill of exchange made payable only to a bank;
- (v) the use of electronic clearing system through a bank account;
- (vi) a credit card;
- (vii) a debit card.

Explanation.—For the purposes of this clause and clause (g), the term “bank” means any bank, banking company or society referred to in sub-clauses (i) to (iv) of clause (a) and includes any bank [not being a banking company⁶⁵ as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949)], whether incorporated or not, which is established outside India;

- (d) where the payment is made by way of adjustment against the amount of any liability incurred by the payee for any goods supplied or services rendered by the assessee to such payee;
- ⁶(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) or dairy or poultry farming; or
 - (iii) fish or fish products⁶⁸; or
 - (iv) the products of horticulture or apiculture,
 to the cultivator, grower or producer of such articles, produce or products;
- (f) where the payment is made for the purchase of the products manufactured or processed without the aid of power in a cottage industry, to the producer of such products;
- ⁶⁹(g) where the payment is made in a village or town, which on the date of such payment is not served by any bank, to any person who ordinarily resides, or is carrying on any business, profession or vocation, in any such village or town;
- (h) where any payment is made to an employee of the assessee or the heir of any such employee, on or in connection with the retirement, retrenchment, resignation, discharge or death of such employee, on account of gratuity, retrenchment compensation or similar terminal benefit and the aggregate of such sums payable to the employee or his heir does not exceed fifty thousand rupees;
- (i) where the payment is made by an assessee by way of salary to his employee after deducting the income-tax from salary in accordance with the provisions of section 192 of the Act, and when such employee—
 - (i) is temporarily posted for a continuous period of fifteen days or more in a place other than his normal place of duty or on a ship; and
 - (ii) does not maintain any account in any bank at such place or ship;
- ⁷⁰(j) where the payment was required to be made on a day on which the banks

were closed either on account of holiday or strike;

- (k) where the payment is made by any person to his agent⁷¹ who is required to make payment in cash for goods or services on behalf of such person;
- (l) where the payment is made by an authorised dealer or a money changer against purchase of foreign currency or travellers cheques in the normal course of his business.

The payments to the small farmers by cash other than account payee cheques was never doubted by the Revenue. The assessee is following prevailing business practice from earlier years. Further, provisions of Sec. 40A(3) of the Act must not be read in isolation or exclusion of Rule 6DD of Income Tax Rules, 1962. The section must be read alongwith Rule and on reading together, it is very clear that provisions are not intended to restrict the business activities. The Id. Assessing Officer cannot restrict the Business of the assessee on application of the Rule 6DD, further the provisions of Sec. 40A(3) of the Act empowers the Id. Assessing Officer to disallow deduction claimed as expenditure where payments are not by account payee cheque/draft. The Id. Assessing Officer should analysis the payments either by Crossed Cheque or Bank Draft and ascertain whether the payments are genuine considering business expediency, genuineness and bonafide peculiar transactions of the business. The assessee makes cash payments in the circumstances as per the intention of the farmers/supplier who transact on cash basis and no credit facility is available in the villages. So, considering the apparent facts and

nature of business of the assessee and purchase of country coal from small farmers who are illiterate and does not have permanent place of Business and also vendors deliver country coal at the working site of assessee. We support our opinion with the decision of *Anupam Tele Services vs. ITO 366 ITR 122 (Guj)* and set aside the order of the Commissioner of Income Tax (Appeals) and delete the addition made by the Id. Assessing Officer on this ground. This ground of the assessee is allowed.

5 The last ground raised by the assessee is that the Id. Commissioner of Income Tax (Appeals) erred in confirming the disallowance of salary of ₹4,50,000/- made by the Id. Assessing Officer.

5.1 The Id. Assessing Officer on perusal of the Books of account of M/s. Kannappa Corporation found that the assessee has claimed higher salary payments compared to the turnover and disallowed ₹4,50,000/- as excess salary paid. Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

5.2 In the appellate proceedings, the Id. Authorised Representative explained that the payments are fully supported by vouchers and registers and payments are reasonable considering the

size of Business and turnover. The Id. Authorised Representative explained that the assessee has also maintained CFA activities for five different principals being Zuari Industries Limited, Punjab Chemicals Ltd, India Potash Ltd, Nagarjuna Fertilizers and Chemicals Ltd apart from sale of fertilizers and the salary paid to the staff is ₹5,000/- per person and the assessee has employed fourteen persons during the financial year 2008-2009 and very much necessary to conduct the CFA business activities. The Id. Commissioner of Income Tax (Appeals) is of the opinion that the assessee could not substantiate with sufficient evidence and relied on the findings of the Id. Assessing Officer on unreasonability and have considered ₹4,000/- as average salary payment per person and sustained the addition of ₹1,68,000/- and partly allowed the appeal. Aggrieved by the order of the Commissioner of Income Tax (Appeals) the assessee assailed an appeal before Tribunal

5.3 Before us, the Id. Authorised Representative argued the grounds and explained that the assessee has employed fourteen person on a average salary of ₹5,000/- per month which is reasonable and they have to deal with five principles to whom the assessee is acting as CFA and also engaged in fertilizer business. The Books of account are thoroughly examined and there is no failure on the part of

the assessee to substantiate their claims. But the Id. Assessing Officer unilaterally compared the turnover and disallowed ₹4,50,000/- whereas the Id. CIT(A) has granted relief to the extent of ₹2,82,000/- and confirmed addition of ₹1,68,000/-. Considering the type of business principle and Agent relationship of CFA business operations, the amount paid and reflected in the Books of accounts with supporting vouchers are reasonable and prayed for deleting the addition of ₹1,68,000/-.

5.4 Contra, the Id. Departmental Representative relied on the findings of the Commissioner of Income Tax (Appeals) order and opposed to the grounds.

5.5 We heard rival submissions, perused the material on record. The Id. Commissioner of Income Tax (Appeals) considering the volume of business and CFA activities has granted partial relief to the assessee but sustained ₹1,68,000/- as excess salary paid. We on perusal of material found that neither the Id. Assessing Officer nor Id. Commissioner of Income Tax (Appeals) has brought on record any cogent material or evidence or comparables in respect of same line of business in support of the Revenue. So, considering the inflation rate, commercial expediency and employees working conditions we are of

the opinion that the order of Commissioner of Income Tax (Appeals) cannot be sustained on the ground and we direct the Id. Assessing Officer to delete the addition of ₹.1,68,000/- and allow the ground of the assessee. The ground of the assessee is allowed.

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

Order pronounced on Wednesday, the 10th day of August, 2016, at Chennai.

Sd/-
(चंद्र पूजारी)
(CHANDRA POOJARI)
लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-
(जी. पवन कुमार)
(G. PAVAN KUMAR)
न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated: 10.08.2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |