

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपीलसं./ITA Nos.: **3497 & 3498/CHNY/2018**

निर्धारण वर्ष/Assessment Year: 2012 - 13 & 2013-14

**Shri Kalimuthu
Harichandran,**
Prop.: M/s. Sri Hari Chandra
Agencies,
No.38, Ennore Express Road,
(Nearby Masthan Koil),
Thiruvottiyur,
Chennai- 600 019.

The ACIT,
vs. Non Corporate-Circle 4(1),
Chennai.

PAN: ABBPH 9112N

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri I. Dinesh, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri R. Mohan Reddy, CIT

सुनवाई की तारीख/Date of Hearing

: 15.11.2022

घोषणा की तारीख/Date of Pronouncement

: 18.11.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

These two appeals by the assessee are arising out of two different orders of the Commissioner of Income Tax (Appeals)-5, Chennai vide ITA No.215 & 216/CIT(A)-5/2016-17 both dated

18.09.2022. The assessments were framed by the ACIT, Non-Corporate Circle 4(1), Chennai for the assessment years 2012-13 & 2013-14 u/s.144 r.w.s 147 of the Income Tax Act, 1961 (hereinafter the 'Act') vide orders dated 28.03.2016 & 28.12.2016 respectively.

2. The first jurisdictional issue raised by assessee in ITA No.3498/Chny/2018 for assessment year 2013-14 is by way of additional ground that no mandatory notice u/s.143(2) of the Act had never been issued by the AO and hence, the assessment is bad in law. For this, assessee has raised the following two additional grounds:-

“1. The CIT(A) ought to have cancelled the assessment as the mandatory notice u/s.143(2) had never been issued by the AO in the course of assessment proceedings in the light of Asst CIT vs. Hotel Blue Moon (2010) 321 ITR 0362.

2. The CIT(A) ought to have appreciated the fact that notice u/s.143(2) is a pre-requisite for framing a best judgment assessment as contemplated u/s.144 of the IT Act.

The above grounds raised by assessee are purely legal and hence, admitted and being adjudicated.

3. At the outset, the Id. CIT-DR was asked, whether the assessment records as directed on the earlier date of hearing were brought or not. The Id.CIT-DR stated that the assessment records

are available and he was asked whether notice u/s.143(2) of the Act has been issued for framing of assessment u/s.143(3) of the Act or 144 of the Act. The Id. CIT-DR produced assessment records and also produced copy of notice issued u/s.143(2)of the Act, which was actually received by assessee himself. When this was confronted to Id. counsel for the assessee, he could not make any further argument.

4. Since the Revenue has issued notice u/s.143(2) of the Act and copy is placed on record by the Revenue and produced assessment records before us, we are of the view that this issue does not remain in favour of assessee. Hence, this additional ground raised by assessee is accordingly dismissed.

5. The next common issue in both the appeals of assessee for assessment year 2012-13 and 2013-14 is as regards to the order of CIT(A) confirming the action of AO in making disallowance u/s.40A(3) of Rs.22,14,69,841/- in assessment year 2012-13 and Rs.22,49,07,400/- in assessment year 2013-14. Since the issue and facts are identical and grounds raised by assessee are also identical, we will take the facts and grounds from assessment year

2012-13 in ITA No.3497/Chny/2018. The relevant grounds raised by assessee read as under:-

2. The Commissioner of Income Tax (Appeals) erred in upholding the action of Assessing officer disallowing a sum of Rs.22,14,69,841/- u/s.40A(3) of the IT Act.

3. The Commissioner of Income Tax (Appeals) ought to have considered the fact that the cash payments made relate to agricultural produce which falls under the purview of Rule 6DD(e) and disallowance u/s.40A(3) is not warranted.

4. The Commissioner of Income Tax (Appeals) failed to consider the facts of the case and the submissions made before him in the proper perspective.

6. Brief facts of the case are that the AO during the course of assessment proceedings, while examining the books of accounts noted that the assessee has made cash payment in excess of Rs.20,000/- for purchase of dhall and oil and for this, assessee admitted while answering question No.19 in the statement recorded during the course of survey on 13.11.2013 and the relevant reply reads as under:-

“As far as oil purchase is concerned no credit is given by the suppliers. Payment has to be made then and there. For S.V.S. Oil Mills, I have to make only cash payment for purchases. Others accept payments through RTGS Remittance. All Dhall purchases are made through brokers and only cash payments are made. As far as sale is concerned, 85% is only cash sales. From S.V.S. Oil I have started purchasing only from last month and Dhall purchases I have been doing for nearly two years.”

Further, the assessee also agreed during statement recorded on 19.12.2016 that the assessee has made cash payment in excess of Rs.20,000/- towards purchase of dhall and oil vide question Nos.8 & 9 and the relevant questions and answer as reproduced in assessment order are being reproduced again as under:-

""Q.8. During the course of survey proceedings, it was found that you have made cash payments in excess of Rs.20, 000/- towards purchase of dhall and oil. While answering to Qn. No. 19 in the statement recorded during the course of survey on 13-11-2013, you have also confirmed the above fact as under:

Ans.As far as oil purchase is concerned no credit is given by the suppliers. Payment has to be made then and there. For S.V.S. Oil Mills, I have to make only cash payment for purchases. Others accept payments through RTGS Remittance. All Dhall purchases are made through brokers and only cash payments are made. As far as sale is concerned, 85% is only cash sales. From S.V.S.Oil I have started purchasing only from last month and Dhall purchases I have been doing for nearly two years.

What do you say in this regard?

Yes. I confirm the above statement. I made only cash payments for purchase of Dhall.

Q.9. During the F.Y.11-12 relevant to the A. Y. 2012-13, dhall purchases are Rs. 18,01,19, 841/- as taken from the P&L Account and Dhall Purchases a/c impounded. Do you confirm the above? Are you aware that the above cash payment is in violation of Sec. 40A(3) of the I.T.Act, 1961?

Ans. I confirm that I had made cash payments for dhall purchases of Rs:18,01,19, 841/- during the F.Y. 2011-12 due to practical problems but I do not have income-tax knowledge.”

The assessee confirmed to have made cash purchases in excess of Rs.20,000/- to a single person in a single day in respect of dhall purchase to the extent of Rs.18,01,19,841/- and purchase of oil of Rs.4,13,50,000/-. Therefore, the AO made total disallowance by invoking the provisions of section 40A(3) of the Act amounting to Rs.22,58,09,550/-. Aggrieved, assessee preferred appeal before CIT(A). The CIT(A) also confirmed the action of the AO. Aggrieved, assessee is in appeal before the Tribunal.

7. After hearing rival contentions and going through the case records, it is noted that it is an admitted position that the assessee is a trader i.e., retail and wholesale trader of dhall and oil and he admitted that he is making payment in cash in excess of Rs.20,000/- for purchase of dhall and oil and for which, he has made total payments to the extent of Rs.22,58,09,550/-. Even, now before us the Id.counsel could not file any details that the assessee's case falls under any of the exception as provided under the Rule 6DD of the Income Tax Rules, 1962. We have gone through the provisions of section 40A(3) of the Act, which is applicable from 01.04.2009 as substituted by the Finance Act, 2008, which reads as under:-

“(3) Where the assessee incurs any expenditure in respect of which a payment 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, or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, exceeds ten thousand rupees, no deduction shall be allowed in respect of such expenditure.”

In view of the above provision of sub-section (3) to section 40A which has been amended w.e.f. 01.04.2009 by the Finance Act, 2008 provides that the provisions of sub-section (3) of section 40A of the Act shall be attracted where the aggregate of the payments made to a single party otherwise by an account payee cheque drawn on a bank or account payee bank draft exceeds Rs.20,000/- in a day. It means that the provisions of section 40A(3) of the Act is very clear and assessee is unable to prove that his case falls under any of the exception as provided under Rule 6DD of the Income Tax Rules, 1962. Hence, we confirm the disallowance.

8. Similar are the disallowance made in assessment year 2013-14 in ITA No.3498/Chny/2018 by invoking the provisions of section 40A(3) of the Act and confirmed by the CIT(A) for an amount of Rs.22,49,07,400/-. Since the facts and circumstances are identical, taking a consistent view, we dismiss this issue in assessment year 2013-14 also.

9. The next issue in assessment year 2013-14 is as regards to the order of CIT(A) upholding the action of AO in confirming the disallowance of bad debts claimed amounting to Rs.4,94,28,399/-.

10. At the outset, the Id.counsel for the assessee conceded the ground of bad debts and stated that he is not interested in prosecuting the same. Hence, the same is dismissed as not-prosecuted.

11. In the result, the appeals filed by the assessee are dismissed.-

Order pronounced in the open court on 18th November, 2022 at Chennai.

Sd/-

(जी. मंजुनाथ)

(G. MANJUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 18th November, 2022

RSR

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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|------------------------|--------------------------|-----------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकरआयुक्त (अपील)/CIT(A) |
| 4. आयकरआयुक्त /CIT | 5. विभागीयप्रतिनिधि/DR | 6. गार्डफाईल/GF. |

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT