

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B" : HYDERABAD

BEFORE SHRI P. M. JAGTAP, ACCOUNTANT MEMBER
AND
SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA.No.900/Hyd/2014
Assessment Year 2005-2006

Manikanta Concerns Warangal. PAN AACFM8523C (Appellant)	vs.	DCIT, Circle-1 Warangal (Respondent)
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For Assessee :	Mr. P. Ravishagiri Rao
For Revenue :	Mr. R. Clement Ramesh Kumar

Date of Hearing :	25.05.2015
Date of Pronouncement :	05.06.2015

ORDER

PER P.M. JAGTAP, A.M.

This appeal filed by the assessee is directed against the order of the Ld. CIT(A)-18, Mumbai dated 04.02.2014.

2. Ground Nos. 1 and 4 raised by the assessee in this appeal are general in nature which do not call for any specific decision. The issue involved in ground No.2 relates to the addition of Rs.7,01,536 made by the A.O. and confirmed by the Ld. CIT(A) by disallowing the claim of the assessee for shortage.

3. Briefly stated, the assessee in the present case is a partnership firm which is engaged in the business of rice trading. The return of income for the year under consideration

was filed by it on 01.11.2005 declaring total income of Rs.5,45,790. From the trading account filed by the assessee along with its return of income, it was noticed by the A.O. that in addition to the shortage of 1177.74 quintals of maize, a deduction of Rs.12,06,896 was claimed by the assessee on account of difference in quality and rate of maize supplied. During the course of assessment proceedings, the assessee therefore was called by the A.O. to offer its explanation in the matter. In reply filed by the assessee vide letter dated 03.10.2007, the following submission was offered by the assessee.

“During the previous year relevant to the A.Y. 2005-06 we have paid a sum of Rs.12,06,896/- towards rate differences, shortage and excess moisture content to the maize purchasers, details for which have already been furnished at the time of last hearing (Rs.3,66,190/- paid to M/s. M.K. International Ltd and Rs. 8,40,706/- paid to M/s. PEC Ltd.). We are now enclosing herewith debit note received from M/s. M. K International Ltd., New Delhi under which we have paid Rs.3,66,190/- towards rate difference on maize sold by us to them. We are also enclosing the statement of account of M/s. PEC Ltd., Visakhapatnam to whom we have paid a sum of Rs.8,40,706/- towards shortage and excess moisture content in maize. Further, we have sold 23390.30 quintals of maize to M/s. PEC Ltd., Vishakhapatnam (Regd. Office is in New Delhi) on 02.05.2004 under bill no. 20 for Rs.1,46,18, 938/-. The purchaser has paid a sum of Rs.1,25,25,666/- on 14.05.2004 and a further sum of Rs.12,52,566/- on 30.07.2004 through cheques. The balance, of Rs. 8,40,706/- was deducted by them towards quantity shortage and excess moisture content. We have already written a letter to M/s. PEC Ltd., requesting them to send confirmation in this regard. We will submit the confirmation letter from M/s. PEC Ltd., as and when it is received.”

3.1. The A.O. was not fully satisfied with the explanation offered by the assessee as above. According to him, the entire short fall of 1122.45 quintals was in respect of a single supply made by the assessee to M/s. BEL Limited under Bill No.20 dated 02.05.2004 and the percentage of the said short fall thus was substantially higher at 4.8% and not 0.57% as claimed by the assessee. He held that the said short fall claimed by the assessee in respect of sales effected to PEC Limited in addition to the shortage of 1117.74 quintals claimed in respect of purchase was quite unreasonable and accordingly, the deduction claimed by the assessee on account of such shortage to the extent of Rs.7,01,536 was disallowed by him in the assessment completed under section 143(3) vide order dated 27.12.2007.

4. Against the order passed by the A.O. under section 143(3), an appeal was preferred by the assessee before the Ld. CIT(A) and the following submission was made on its behalf before the Ld. CIT(A) in support of the claim for shortage in the supply of goods made to M/s. PEC Limited.

“During the financial year relevant to the A. Y. 2005-06 the appellant sold maize in his regular course of business to the tune of Rs. 25,06,41,782/- out of which sales to PEC Ltd., a Government of India undertaking is Rs.16,46,16,447/-. In respect of sales to PEC Ltd under sale bills No. 20, dated 02.05.2004, 23390 quintals of maize was sold for a sum of Rs.1 46,18 938/-. While settling the bill, the purchaser company has paid a sum of Rs.1,37,78,232/- only deducting Rs.7,01,536/- under two heads of account viz. Rs. 7,01,532/- towards shortage in weight and Rs 1,39,174/- towards excess moisture content. We are herewith enclosing copy of the certificate issued by the PEC Ltd confirming the above facts. We are also herewith enclosing copy of sale bill No. 20 dt. 2.5.2004 and copies of related Railway Receipts No. 435047, 435048 & 435049 under which maize has been transported The A.O. allowed the sum of Rs.1,39,174/- claimed as deduction towards excess moisture content but

disallowed Rs.7,01,532/- towards shortage in weight claimed by the appellant on the plea that the shortfall of 1,122.45 quintals was substantially high. Hence, the appellant requests to delete the addition of Rs 7,01,532/- made by the A.O. without any basis.”

4.1. The Ld. CIT(A) did not find merit in the submission made by the assessee on this issue and proceeded to confirm the addition made by the A.O. for the following reasons given in para 2.3 of his impugned order.

“2.3. I have considered the submissions of the appellant, order of the A.O. and facts of the case carefully, it is noticed that the A.O. has observed that the assessee has claimed loss of 1,177.74 quintals as shortage on the sale and purchase of maize, It was also noticed that the assessee has debited Rs.12,06,896/- in the trading account of maize towards quality and rate difference, Accordingly, show-cause notice was issued to the assessee to explain the same. In response to this, the AR of the appellant has submitted its reply. After considering the same, the A.O. has allowed the claim of Rs.12,06,896/- and the claim of Rs.1,39,174/- deducted by M/s. PEC Ltd., towards excess moisture content and an amount of Rs.3,66,190/- towards rate difference from M/s. M. K. International Ltd. The A.O. has also allowed the shortfall on account of moisture content @ 0.57% claimed by the appellant On purchase, but has not allowed the short fall of Rs.7,01,536/- as claimed by the assessee from M/s. PEC Ltd., Visakhapatnam which was claimed at a substantially higher rate of 4.8%.

On the other hand, the AR of the appellant has submitted that the AO. has disallowed the shortfall of 1,122.45 quintals on account of moisture content by holding it at a very higher side and made addition of Rs. 7,01,536/- is not as per the facts of the case.

From the perusal of the submissions and facts, it is clear that the assessee has claimed moisture loss on purchase @ 0.57% which was allowed by the AO., but again the assessee has claimed the shortage on account of moisture content at a very higher rate of 4.8% sold to M/s. PEC Ltd. No reason for claiming the moisture content @ 4.8% was given nor any evidence was submitted before the AO. to prove that how the entire shortfall of 1,122.45 quintals was claimed in a single bill No. 20 dated 0205.2004 sold to M/s. PEC Ltd. Since onus is on the assesses to submit complete details and evidence before

claiming any deduction, but in the present case, no evidence was submitted for claiming moisture content deduction @ 4.8% in place of 0.57% shortfall claimed on the purchases. Thus, the assessee has failed to discharge its onus, therefore, the addition made by the A.O. of Rs.7,01,536/- is upheld and ground of appeal dismissed.”

5. We have heard the arguments of both the sides and also perused the relevant material on record. The Ld. Counsel has invited our attention to the copy of certificate dated 11.08.2009 issued by the concerned customer M/s. PEC Limited confirming that the quantity received by them against Bill No.20 dated 02.05.2004 issued by the assessee was short by 1122.45 quintals. It was also confirmed by the said party that a sum of Rs.7,01,532 had been deducted by them for such shortage while making the payment of the relevant bill to the assessee. As submitted by the Ld. Counsel for the assessee, this certificate was filed before the Ld. CIT(A) by the assessee as additional evidence and although a clear mention of the same was made in the written submission filed before him, which is also evident from the relevant portion of the written submission reproduced by the Ld. CIT(A) in his impugned order, no cognizance of the same was taken by the Ld. CIT(A). On the other hand, he confirmed the disallowance made by the A.O. on account of assessee's claim for shortage on the ground that there was failure on the part of the assessee to support and substantiate its claim by producing the relevant documentary evidence. In our opinion, such clinching evidence in the form of certificate issued by PEC Limited, was filed by the assessee before the Ld. CIT(A) in support of its claim for deduction on account of shortage and the Ld. CIT(A) was not justified in confirming the disallowance made by the A.O. on this issue by completely overlooking the said evidence. At the time of hearing before us, the learned

D.R. has not been able to dispute that the confirmation certificate dated 11.08.2009 issued by PEC Limited is sufficient to support and establish the claim of the assessee for shortage of 1122.45 quintals of maize in the supply made to the said party as well as the deduction of Rs.7,01,532 made by the said party for such shortage. His only contention is that the assessee already having claimed shortage in respect of purchase of maize, the claim for shortage at the time of sale again amounts to double deduction. We are unable to accept this contention of the learned D.R. The shortage at the time of purchase and the shortage at the time of sale are two different issues and it cannot be said by any stretch of imagination that once the assessee has claimed shortage at the time of purchase, he cannot claim shortage at the time of sales. In the present case, the claim of the assessee for shortage at the time of sale was duly supported by the certificate issued by the concerned customer confirming the shortage and the Ld. CIT(A) in our opinion was not justified in confirming the disallowance made by the A.O. on account of such shortage. We, therefore, set aside his impugned order on this issue and direct the A.O. to delete the addition made on account of shortage.

6. The issue raised in ground No.3 relates to the disallowance of Rs.1,49,242 made by the A.O. under section 40A(3) of the Act which is confirmed by the Ld. CIT(A).

6.1. During the course of assessment proceedings, it was noticed by the A.O. that payments in cash exceeding Rs.20,000 were made by the assessee to one Mr. K. Narendra Babu on account of 'Coolie charges' aggregating to Rs.7,47,120. Since the said payments were made on regular

basis and some other payments were made by the assessee to the concerned party through cheques, the A.O. was of the view that the impugned payments made in cash could have been made by the assessee through cheques. In this regard, the explanation offered by the assessee that the payments in cash were made as a matter of business exigency was not found acceptable by the A.O. and by invoking the provisions of section 40A(3), he made disallowance of Rs.1,49,424 being 20% of the cash payments of Rs.7,47,120.

6.2. The disallowance made by the A.O. under section 40A(3) was disputed by the assessee and the following submission was made by it before the Ld. CIT(A) in support of its case on this issue.

"The appellant debited to the profit and loss account a sum of Rs.19,53,528/- under the head "Kanta Cooli Account" (loading and unloading charges at railway goods shed). The A.O. disallowed Rs.1,49,242/- u/s 40A(3) being 20% of cash payments of Rs.7,47,120/-. The loading and unloading charges are paid to the Railway licensed hamalies for unloading maize from lorries and loading the same into wagons. As the payments cannot be made individually to each hamali, the appellant has made the hamali payments collectively to Mr.K. Narender Babu, authorized agent by cash. The work of unloading and loading was done in the late evenings and as the payments have to be made to hamalies immediately after the completion of work on the same day, the appellant has made the payments in cash as demanded by Mr. K.Narender Babu for distribution to hamalies and payment to each hamali did not exceed Rs. 20,000/- on a single day. Confirmation letter from Mr. K.Narender Babu explaining the circumstances under which cash has to be paid to him is enclosed herewith for favour of your kind consideration. The A.O. without considering the necessity of the payment, its exigency and without considering the nature of payment disallowed 20% of the cash payments of Rs.7,47,120/- which is not warranted. Hence, the appellant requests to delete the addition of Rs.1,49,242/- made by the A.O."

6.3. The Ld. CIT(A) did not find merit in the above submission made by the assessee on this issue and confirmed the disallowance made by the A.O. under section 40A(3) for the following reasons given in para 3.3 of his impugned order.

3.3. I have considered the submissions of the appellant, order of the A.O. and facts of the case carefully, it is noticed that the assessee has made cash payment of Rs.7,47,120/- to one Shri Narendra Babu. Accordingly, show cause notice was issued, to the assessee to explain why the provisions of Sec.40A(3) may not be invoked. In response to this, the AR of the appellant has submitted that the cash payments were made because of business contingency. The A.O. has not accepted the contention of the appellant and applied provisions of Sec. 40A(3) and made addition of Rs.1,49,424/- being 20% of the cash payments.

On the other hand, the AR of the appellant has submitted that the assessee has debited a sum of Rs. 19,53,528/- to the profit & loss account under the head Kanta Cooli Account. The A.O. has disallowed Rs.1,49,242/- under section 40A(3) being 20% of cash payments of the loading and unloading charges were paid to Railway License Hamalis for unloading maize from lorries and loading the same into wagons. Since this payment was not made in cash to each and every person, therefore, the collective payment was made to Shri K. Narendra Babu, authorized agent of the assessee. It was argued that the cash payment was made for business purposes, therefore, it should not have disallowed u/s 40A(3) of the I.T. Act.

From the perusal of the submissions and facts. it is clear that the assessee has made cash payment of Rs.7,47,120/- to Shri K.Narendra Babu, authorized agent of the assessee for making payment to the railway license labour for loading and unloading of the maize. It is also undisputed that the cash payment was not made to each of individual by the assessee, but the cash payment was made on different intervals to Shri K.Narendra Babu, authorized agent of the assessee. The appellant has failed to submit why the cheque payment was not made to Shri K.Narendra Babu, agent of the assessee when he was

having a bank account. The right way was to issue cheque to Shri K.Narendra Babu, who should have deposited it in its bank account and as and when the labour payment was to be distributed he should have withdrawn from his bank account. But actually, the assessee has not issued cheques to Shri Narendra Babu, but cash payments, have been made which is a clear violation of the provisions of Sec. 40A(3). The case of the appellant does not fall within any explanation mentioned in this section, moreover the Hon'ble Supreme Court in case of Attar Singh Gurmukh Singh Vs. ITO 191 ITR 667 has held that Sec. 40A(3) cannot be said to invalid on the ground that it places a restriction on the right to carry on business and is arbitrary. Keeping in view these facts & circumstances it is held that the appellant has violated the provisions of Sec. 40A(3), therefore, addition made of Rs.1,49,242/- is upheld and ground of appeal dismissed.”

7. We have heard both the sides and also perused the relevant material on record. As submitted by the Ld. Counsel for the assessee, the work of unloading maize from lorries and loading the same into railway wagons some times was done in the late evenings and since the payments on account of Hamali Charges were required to be made by the concerned contractor to Hammals immediately after the completion of the work, he demanded payments in cash which the assessee was compelled to make. He has also invited our attention to the certificate issued by the concerned contractor Mr. K. Narnedra Babu dated 13.12.2007 confirming this position and submitted that this evidence filed by the assessee before the Ld. CIT(A) for the first time was not taken into consideration by the Ld. CIT(A). A perusal of the written submission filed by the assessee on this issue before the Ld. CIT(A) also shows that a specific reference was made by the assessee to this certificate and relying on the same, it was contended that the impugned payments in cash were made in the exceptional circumstances. In our opinion, this stand taken by the assessee before the Ld.

CIT(A), which was duly supported by cogent evidence in the form of confirmation certificate issued by the concerned contractor, is sufficient to show that the impugned payments in cash were made by the assessee in the exceptional circumstances as specified in Rule 6DD of the I.T. Rules, 1962 and therefore, no disallowance under section 40A(3) is called for such cash payments. We therefore, delete the disallowance made by the A.O. and confirmed by the Ld. CIT(A) on this issue and allow ground No.3 of the assessee.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 05.06.2015.

**Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER**

**Sd/-
(P.M. JAGTAP)
ACCOUNTANT MEMBER**

Hyderabad, Dated 05th June, 2015.

VBP/-

Copy to

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2.	The DCIT, Circle-1, Warangal.
3.	Commissioner of Income Tax (Appeals)-18, Room No.20, 3 rd Floor, B-Wing, Mittal Court, Nariman Point, Mumbai – 400 021. (Holding concurrent jurisdiction over CIT(A)-VI, Hyderabad.
4.	Commissioner of Income Tax-(A)-VI, Hyderabad.
5.	Commissioner Income Tax-5/6, Hyderabad
6.	D.R. I.T.A.T. "B" Bench, Hyderabad.
7.	Guard File