

IN THE INCOME TAX APPELLATE TRIBUNAL
GAUHATI 'E' COURT, ATKOLKATA

BEFORE SHRI A. T. VARKEY, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.189/Gau/2019

(निर्धारणवर्ष / Assessment Year:2015-16)

M/s Ashok Motors	Vs.	DCIT, Circle-Tezpur
C/o, P.C. Bothra, Advocate Opp. Church Field, Tezpur		
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAZFA 7611 E		
(Appellant)	..	(Respondent)

Appellant by : Shri P.C. Bothra, Advocate

Respondent by : Shri Jayanta Mridha, JCIT, Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 21/02/2020

घोषणाकीतारीख/Date of Pronouncement : 31/07/2020

आदेश / O R D E R

Per Dr. A. L. Saini:

The captioned appeal filed by the assessee, pertaining to assessment year 2015-16, is directed against the order passed by the Commissioner of Income Tax (Appeal)-1, Guwahati, in appeal no. 36043491190118/ 326, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (in short the 'Act') dated 27/12/2017.

2. At the outset itself, Shri P.C. Bothra, the Id. Counsel, begins by pointing out that the solitary grievance of the assessee in this appeal is that assessing officer erred in making addition of Rs.58,65,244/- under section 40A(3) of the Act, on

account of cash payment exceeding Rs. 20,000/- (threshold limit u/s 40A(3) of the Act).

The Ld Counsel submits before the Bench that cash payment of Rs.58,65,244/- are on account of adjustments of customers` accounts who come for purchase of new Vehicles/automobiles in the assessee`s show room. He submits that the said payment does not come under the purview of “expenditure incurred” as envisaged under section 40A(3) of the Income Tax Act, 1961. The ld. Counsel contends that these payments are refund of money which was taken by the assessee from the customers at the time of booking new Vehicles/automobiles therefore it is not in the nature of “expenditure” within the provisions of section 40A(3) of the Act.

3. On the other hand, Id DR submits before the Bench that the Assessing Officer during the assessment proceedings noticed that assessee made the cash payment to various parties to the tune of Rs.58,65,244/- which is utter violation of the provisions of section 40A(3) of the Act. On appeal, ld. CIT(A) confirmed the addition made by the Assessing Officer. During the appellate proceedings, the ld. CIT(A) called the remand report, but assessee did not submit the relevant documents, therefore addition made by the assessing officer should be sustained.

4. We heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld CIT(A) and other materials brought on record. Learned Counsel submits that assessee is an authorized dealer of Mahindra & Mahindra and his business is to sell of vehicles /automobiles/parts manufactured by Mahindra &Mahindra. According to assessee, when the customer gives/ places an order for purchase of a vehicle / automobile, the *modus operandi* adopted by the assessee is that the customers give some advances against the goods / automobiles which they want to purchase from assessee and in turn assessee keeps the goods / automobiles

ready to be delivered and on actual delivery of the goods / automobiles, such advance is returned back to the customers or it may be adjusted in the cost of the goods / automobiles and the customers pay the balance amount of money by way of cheque or cash. Sometimes as per terms and conditions, the said advances may be refunded to the customers at the time of actual delivery of the goods / automobiles. According to Id. Counsel for the assessee it is basically a trading receipt in the form of advance / cash for the purpose of selling / trading the goods / automobiles. Though, the Id. Assessing officer initially initiated penalty proceedings on this account, however, it has been dropped later on.

5. We note that the main grievance of the assessee is that the Assessing Officer has disallowed the expenditure Rs.58,65,244/- on the plea that the expenditure incurred by the assessee is beyond the threshold limit prescribed u/s 40A(3) of the Act. The Ld Counsel submits that when customers visit the assessee's show room then they give some amount in cash for booking the Vehicles/ Automobiles as a security deposit which may be refunded to the customers when the actual transaction took place between assessee and customers and sometimes the said advance so collected may get adjusted in the price of the Vehicles/ Automobiles. Thus, according to Id. Counsel, the expenditure so incurred is nothing but returned back of the deposit / advance collected by the assessee from the customers. Therefore, according to Id. Counsel, this is not an expenditure, but a deposit or advance amount, which is paid by the customers to the assessee to demonstrate that he (customer) is a bona fide purchaser and when the goods / vehicle is delivered to the customer then such advance is returned back to the customer or it may get adjusted in cost of the vehicle/automobiles. Therefore, according to Id. Counsel, the Assessing Officer failed to identify the true nature of transactions and therefore assessing officer erred in making disallowance of the expenditure u/s 40A(3) of the Act.

6. Per contra, the Id. D.R. for the Revenue vehemently opposed the plea of the Id. Counsel and stated that the assessee did not produce any evidences before the Assessing Officer at the assessment stage, the assessee failed to produce any evidences before the Assessing Officer when the Id. CIT(A) called for the remand report. In such a scenario, the assessing officer and Id CIT(A) have to draw adverse inference against the assessee therefore Id DR does not want to interfere in the order of the authorities below.

7. We note that this is a case where the assessee is running a show room in the name and style of M/s Ashok Motors. M/s Ashok Motors is a partnership firm which was constituted on 01.04.2014 and it is a Dealer of Mahindra car, Motor Parts and Accessories and it sells the automobiles / spare parts of the Mahindra & Mahindra. According to the assessee, *modus operandi* of its business is that when the customer places order with the assessee, then in order to know that customer is bona fide, the assessee takes some cash / cheque in advance from such customer and thereafter the assessee, in turn places order with Mahindra & Mahindra for vehicle / spare parts for the said customer and when the vehicle/parts is delivered to the customer, then the advance / or security deposit so taken by the assessee is returned back in cash to the customer and therefore according to Id. Counsel, the Assessing Officer has erred in treating the advance / security deposit which is returned back to the customer as expenditure. We note that before the Assessing Officer/ Id. CIT(A) the assessee has not been able to adduce any evidences which action of the assessee is not acceptable to us. Be that as it may be, in the interest of justice and fair play we set aside the order of the Id. CIT(A) and remit the matter back to the file of the Assessing Officer with a direction to examine the veracity of the contention/*modus operandi*, as narrated above, which is made by the assessee before this Tribunal, and adjudicate the issue on merits in accordance with law. For statistical purposes, the appeal of the assessee is treated to be allowed.

8. Before parting, it is noted that the order is being pronounced after 90 days of hearing. However, taking note of the extraordinary situation in the light of the Covid-19 pandemic and lockdown, the period of lockdown days need to be excluded. For coming to such a conclusion, we rely upon the decision of the Coordinate Bench of the Mumbai Tribunal in the case of DCIT vs. JCB Limited in ITA No. 6264/Mum/2018 and ITA No. 6103/Mum/2018 for A.Y. 2013-14 order dated 14.05.2020.

9. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Court on 31.07.2020

Sd/-
(A.T. VARKEY)
न्यायिकसदस्य / JUDICIAL MEMBER

Sd/-
(A.L.SAINI)
लेखासदस्य / ACCOUNTANT MEMBER

दिनांक/ Date: 31/07/2020
(SB, Sr.PS)

Copy of the order forwarded to:

1. Ashok Motors
2. DCIT, Circle-Tezpur
3. C.I.T(A)-
4. C.I.T.- Guwahati.
5. CIT(DR), GauhatiBench, Guwahati.
6. Guard File.

True copy

By Order

Senior Private Secretary / DDO/ H.O.O
ITAT, Gauhati Bench