

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC - B” BENCH : BANGALORE**

BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT

ITA No.251/Bang/2022
Assessment Year : 2012-13

M/s. Bappanalli Brothers, C/15, Godown AMPC Yard, New Market Yard, Sirsi — 581 402. PAN : AAAPB 9145 P	Vs.	ACIT, Circle — 1(1), Hubballi.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Pranav Krishna, Advocate
Revenue by	:	Shri. Ganesh R Ghale, Standing Counsel for Department.

Date of hearing	:	27.07.2022
Date of Pronouncement	:	10.08.2022

ORDER

This is an appeal by the Assessee against the order dated 16.2.2022 of CIT(A) - 2, Panaji, Goa, relating to AY 2012-13.

2. The Assessee is a partnership firm engaged in the business of dealing in betelnut, cardamom, pepper and ginger. In the order of assessment passed for AY 2012-13, the AO disallowed a sum of Rs.11,92,500 by invoking the provisions of Sec.40A(3) of the Income Tax Act, 1961 (Act), with the following observations:

"3. *During the course of scrutiny proceeding, the assessee was asked to produce books of accounts alongwith bills/vouchers for verification. On verification, it has been observed that the assessee has made the following payments otherwise than by account payee cheque/draft which is in contravention of section 40A(3) of the Act.*

SL.NO	DATE	TO WHOM PAYMENT MADE	AMOUNT (In Rs.)	MODE OF PAYMENT
1	23.02.2012	Mahadev V Gowdar	5,00,000	CASH
2	19.03.2012	M V Patil	3,64,000	CASH
3	22.03.2012	Nilkanta Gowdar	65,000	CASH
4	29.03.2012	Nilkanta Gowdar	2,63,500	CASH
		TOTAL	11,92,500	

The matter was brought to the notice of the assessee through its A/R. The A/R has explained that these persons being residents of villages having no banking facilities and hence the payments are made in cash. He has, however, submitted that he has no objection in disallowing the abovementioned expenditure of Rs. 11,92,500/- and add it back to the total income of the assessee. In view of abovementioned facts of the case, I disallow the abovementioned amount of Rs. 11,92,500/- as per provisions of section 40A(3) of the Act as these payments were made by the assessee otherwise than by account payee cheque/draft and add it back to the total income of the assessee. Penalty proceedings u/s 271(1)(c) is initiated accordingly for furnishing inaccurate particulars of income."

3. Provisions of Sec.40A(3) of the Act provides that if an assessee makes payment for any expenditure to any person otherwise than Account Payee Cheque or Demand Draft or use of electronic clearing system through a bank account or any other mode as may be prescribed of more than Rs. 20,000 in a single day then such expenditure shall be disallowed. Rule 6DD(e) of the Income Tax Rules, 1962, (Rules) provides for circumstances in which disallowance should not be made u/s.40A(3) of the Act, viz., where the payment is made for purchase of agricultural produce to the cultivator, grower or producer of Agricultural produce.

4. Before CIT(A), the Assessee submitted that the payment in question was made for purchase of ginger (an agricultural produce) from the

Agriculturists and therefore the disallowance made by the AO was unsustainable in view of the provisions of Rule 6DD(e) of the rules. In support of it's the claim, the Assessee filed copy of RTC (record of tenancy rights) of Sri Mahadeva Gowda also known as M.V.Patil (to show that he owned Agricultural lands) to whom payment of Rs.5 lacs and Rs.3,64,000 respectively were made by the Assessee in cash, his affidavit confirming that he received payment for sale of ginger from the bank through his authorized representative Mr. R. G. Bhat. Similar affidavit was also filed by Nilakantappa gowda to whom payment of Rs.65,000 and Rs.2,63,000 were made in cash, who also confirmed that he received payment for sale of ginger from the bank through his authorized representative Mr. R. G. Bhat. He also filed RTC of Neelakantappa Gowda. A certificate from Village Accountant certifying yield of ginger in the lands owned by Mahadev Gowda and Neelakantappa Gowda was also filed. A copy of the yield certificate issued by University of Agricultural Sciences, Dharwad was also filed to the effect that yield of ginger in Sirsi Taluka, where the lands of the two agriculturalists were situate, was in the range of 20-25 tonne/hectare.

5. The AO obtained details of payment made by the Assessee to the aforesaid Agriculturists and it revealed that two bearer cheques had been issued in favour of Mahadev V.Gowder @ M.V.Patil for Rs.3,64,000 and Rs.5,00,000 respectively and these cheques had been encashed by R.G.Bhat from the bank. Similarly Cheque for Rs.65,000 in the name of Neelakanta gowda was encashed by R.G.Bhat and another cheque in the name of Neelakanta gowda for Rs.2,63,000 was allegedly encashed by R.G.Bhat.

6. The CIT(A) called for a remand report from the AO and the AO in his remand report dated 28.1.2019 submitted as follows:

"To further verify contention of the assessee letter u/s 133(6) of the IT Act were issued on 02.01.2019 to the Banks viz., The ING Vysya Bank Ltd, Sirsi & Corporation Bank, Sirsi. The ING Vysya Bank Ltd, Sirsi vide their letter dated 02.01.2019 received in this office on 16.01.2019 submitted the reply and sent copy of front and back side of cheques. The Corporation Bank, Sirsi vide letter dated 14.01.2019 received in this office on 22.01.2019 submitted front and back side of cheques. On verification of cheques furnished by both banks, it is observed that though cheques have been issued in individual name but then were paid in cash cheque No 156178 and 256160 of Corporation bank issued in the name of M V Patil Banavasi and Mahadev V Gowdar respectively. As per assessee submission both name is of one person but sign of the person receiving payment is different on both the cheques. How it is possible? Further, cheque No 256183 of Corporation Bank and cheque No. -122173 of ING Vysya Bank limited were issued to Shri Neelakanta Gowda. But person receiving the payment is Shri Neelakanta Gowda has signed differently in both the cheques 2 corporation Bank cheques issued in the name of M V Patil Banvasi and Neelakant Gowda have one more sign of a persons namely R G Bhat at back of cheque, why cheque issued in the name of different person have, at the bank of cheque, sign of a common person. What is his relation with both these person and with assessee. His sign is not on back side of cheque issued in the name of Mahaclev V Gowda of corporation Bank. All this prove beyond doubt there is something fishy in their transactions.

Therefore, it is requested to upheld the addition of Rs. 11,92,500/- made by the AO u/s 40A(3) of the Act. Copies of replies received from both the Banks u/s 133(6) of the Act is enclosed herewith for your ready reference."

7. The Assessee pointed out R. G. Bhat was a common representative of both the Agriculturists and therefore the Assessee, has proved existence of circumstances specified in Rule 6DD(e) of the Rules and hence the disallowance should be deleted.

8. The CIT(A) however rejected the plea of the Assessee for the reason that the Assessee did not make payment directly to the Agriculturists but through R. G. Bhat. The CIT(A) thereafter observed that Mr. R. G. Bhat was the supplier of agricultural produce because the two agriculturists were from different regions of Karnataka one residing in Dyavanhalli, Shimoga and the other in Banavasi, Uttar Kannada and therefore it was unlikely that the two cultivators residing in distinct regions had one common representative to collect payment on their behalf. The CIT(A) therefore concluded that the payments were not made directly to the cultivator and therefore the Assessee has not proved existence of circumstances set out in Rule 6DD(e) of the rules.

9. Aggrieved by the order of the CIT(A), the Assessee is in appeal before the Tribunal. The learned counsel for the Assessee submitted that the findings of the CIT(A) are contrary to record and based on surmises. The learned DR relied on the order of the CIT(A) and submitted that the evidence filed by the Assessee regarding agricultural produce does not reveal growing of ginger and the record refers to rice and some other crop and this aspect has not been looked into by the CIT(A). The reasons given by the CIT(A) for treating the payment in question not to the Agriculturists but to R.G.Bhat, who is alleged to be an intermediary, in my view cannot be sustained especially when the two agriculturists have affirmed in an affidavit that they received payment through R. G. Bhat and when the cheques in question, though bearer cheques, were cheques issued in their names respectively. Therefore, payment in question to the two Agriculturists cannot be disputed. Both the parties however agreed that the matter can be remanded to the AO for the purpose of verifying the nature of

crop grown by the two agriculturists, though the CIT(A) has not disputed this aspect in the impugned order. For this limited purpose, we remand the issue to the AO who shall consider the evidence on record and other evidence that may be filed to prove the Assessee's case and after affording opportunity of being heard to the Assessee. With these observations, I allow the appeal of the Assessee for statistical purpose.

10. In the result, the appeal is treated as allowed for statistical purpose.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(N. V. VASUDEVAN)
Vice President

Bangalore,
Dated: 10.08.2022.
/NS/*

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

By order

Assistant Registrar,
ITAT, Bangalore.