

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH ‘D’

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 1021/Ahd/2015

AND

ITA No.2215/Ahd/2016

निर्धारण वर्ष/Assessment Year: 2008-09

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| ACIT, Cir.3(1) Vadodara. | Vs | Vadodara District Co-op. Sugarcane Growers Union Ltd. At & PO : Gandhara, Tal. Karjan, Baroda 391 210. PAN : AAAAV 0287 H |
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| अपीलार्थी/ (Appellant) | प्रत्यर्थी/ (Respondent) |
|------------------------|--------------------------|
| Revenue by : | Shri V.K. Singh, Sr.DR |
| Assessee by : | Shri Milin Mehta, AR |

सुनवाई की तारीख/Date of Hearing : 09/07/2018

घोषणा की तारीख /Date of Pronouncement : 12 /07/2018

ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER : ITA No.1021/Ahd/2015 is directed against order of the Id.CIT(A) dated 5.1.2015 and it arises from an order passed under section 271(1)(c) of the Act, while ITA No.2215/Ahd/2016 is directed against the order of the Id.CIT(A) dated 4.4.2016 which arises from the assessment order passed under section 143(3) r.w.s 147 of the Act.

2. First we take quantum appeal i.e. ITA No.2215/Ahd/2016.

3. Grounds taken by the Revenue are not in consonance with the Rule 8 of the Income Tax (Appellate Tribunal) Rules, 1963 - they are descriptive and argumentative in nature. In brief, grievance of the Revenue is that the Id.CIT(A) has erred in deleting disallowance of Rs.2,25,65,154/- which was disallowed by the AO with the aid of section 40A(3) of the Act.

4. Brief facts of the case are that the assessee is a cooperative society with 52% shareholding of Government of Gujarat. It is engaged in the business of manufacturing sugar and other products from sugarcane. It has filed its return of income under section 139(1) on 29.9.2008 declaring NIL income. The assessment was framed under section 143(3) on 28.12.2010 and total loss was determined at Rs.22,30,11,720/- as against total returned loss at Rs.50,61,55,729/-. The Id.AO thereafter received information that the assessee had made payment in cash for purchase of goods and services to Shree Sardar Sugar Co-operative Industries Ltd. He recorded reasons and reopened the assessment. The Id.AO issued notice under section 143(2)/142(1) and invited explanation of the assessee as to why cash payment made to the extent of Rs.2,25,65,154/- exceeding Rs.20,000/- should not be disallowed under section 40A(3) of the Act. In response to the query of the AO, the assessee has filed written submissions vide letter dated 19.10.2012. The Id.AO has reproduced written submissions and disallowed payment of Rs.2,25,65,154/-. The submissions made by the assessee as well as finding of the AO reads as under:

“During the assessment proceedings, the assessee through its submissions dated 10.10.2012 stated as under:

During the year the society had purchased 25555.45 MT of sugar cane from Shree Sardar Sugar Cooperative Industries Ltd. amounting to Rs.3,08,66,514.26. Against these purchases, the Vadodara Sugar has made payment of Rs.2,25,65,154/- in cash which is required to be added as disallowance under rule 6DD of the Income tax Act, 1961. In the revised return filed by us on 16.4.2012 vide Ack No.058160412000582, we have disallowed a sum of Rs.1,32,97,293/- as a disallowance under Rule 6DD which please note." Thereby the assessee has admitted that it had contravened the provisions of section 40A(3) of the Act.

In view of the above, it is clear that the assessee had made payments of a sum exceeding twenty thousand rupees otherwise than by an account payee cheque drawn on a bank or account payee bank draft for purchase of sugarcane. The said payments in cash amounted to Rs.2,25,65,154/-. Thus the assessee had contravened the provisions of sub section 3 of section 40A of the Act read with Rule 6DD. Hence, deduction to the tune of Rs. 2,25,65,154/- is disallowed and added back to the total income of the assessee. I am satisfied that, the assessee firm has furnished inaccurate particulars of income. Therefore, penalty proceedings u/s.271(1)(c): of the IT Act is initiated on this issue. A separate, notice u/s. 271(1)(c) of the IT Act is being issued."

5. On appeal, the Id.CIT(A) has deleted the disallowance by recording following finding:

"3.3. I have considered the submissions of the learned Authorized Representative and the order of the Assessing Officer. I am inclined to accept the contention of the Ld. Authorized Representative on two grounds. Firstly, all payments are made to Shree Sardar Sugar Co-operative Industries Limited which is having 52% shareholding of the Government of Gujarat. Thus, the genuineness of the payments is not in doubt. The Assessing Officer has not pointed out any bogus or inflated purchase. The management of these two concerns is same as claimed by the Ld. Authorized Representative and the Assessing Officer has not disputed this fact. Secondly, M/s SSIL is making purchase of sugar cane from the farmers on behalf of the appellant and making payments to them in cash. Thus, the destination of the cash paid by the appellant is farmers and such payments through the agents, are covered under Rule 6DD as contended by the Authorized Representative and as held by the Hon'ble High Court of Gujarat in the case of Commissioner of Income-tax Vs

A.C. Industries [2014] 43 taxmann.com 290 (Guj.), It has been held by the High Court as under:-

"8. Section 40A(3) dissuades transactions otherwise than by account payee cheque/draft when payment of expenditure exceeds the sum of Rs.20,000/- by disallowing any deduction in respect of such expenditure. However, when payment is made for purchase of agricultural or forest produce or the produce of animal husbandry or dairy or poultry farming etc. as per sub-clause (e) of rule 6DD or when the payment is made by any person to his agent who is required to make payment in cash for goods or services on behalf of such persons under clause (k) of Rule 6DD of Income Tax Rules, no disallowance under sub-section (3) of section 40A shall be made. In other words, exemptions are carved out under rule 6DD when purchase is of agricultural or forest produce etc. or when such purchase is made through agent who was required to pay in cash."

I agree with the Ld. Authorized Representative that the facts of the present case are identical and Rule 6DD is applicable in the present case. Respectfully following the decision of Hon'ble Gujarat High Court in case of A.C. Industries (Supra), the addition of Rs.2,25,65,154/- is deleted and the sole Ground of appeal is allowed."

6. With the assistance of the ld.representatives, we have gone through the record. The ld.CIT(A) has deleted the disallowance by putting reliance upon the judgment of the Hon'ble Gujarat High Court in the case of CIT Vs. A.C. Industries, 43 taxmann.com 290. A reference to Rule 6DD is being made. We would like to make reference to clause (e) and clause (k) of Rule 6DD which are the relevant provisions and on the basis of which the ld.CIT(A) has deleted the disallowance. These clauses read as under:

(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 products; or*
- (iv) the products of horticulture or apiculture,*
to the cultivator, grower or producer of such articles, produce or
products;

.....

- (k) where the payment is made by any person to his agent who is required to make payment in cash for goods or services on behalf of such persons”*

7. A perusal of these clauses will indicate that if payment is being made for the purchase of agricultural or forest produces, the disallowance under section 40A(3) would not be made. Similarly, sub-clause (k) provides that where payment is made by any persons to his agent who is required to make payment in cash for goods or services on behalf of such person. A perusal of the written submissions of the assessee filed before the AO would indicate that the assessee itself admitted about the violation of section 40A(3). It has itself made disallowance of Rs.1.32 crores. A perusal of this details indicate two-three contradictory situations viz. if assessee has itself made disallowance of Rs.1.32 crores whether it is part of total payment of Rs.2.25 crores or not, and if yes, then how the AO has made disallowance of Rs.2.25 cores ? He should have only made disallowance of difference of Rs.2.25 crores minus Rs.1.32 crores. The second question arise is, whether Shree Sardar Co-op. Sugar Industries has acted as an agent on behalf of the assessee for purchase of sugarcane from farmers. Benefit of clause (e) and (k) of Rule 6DD would be given to the assessee if Shree Sardar Cooperative Sugar Industries has acted as an agent of the assessee and made direct payment to the farmers after receiving from the assessee. No such circumstances have been discussed by the

ld.CIT(A). Taking into consideration all the facts, we deem it appropriate to set aside this issue to the file of the AO for re-adjudication. The ld.AO shall determine whether Shree Sardar Cooperative Sugar Industries has acted as agent of the assessee for purchase of sugar cane from farmers. If yes, then benefit of Rule 6DD in terms of Hon'ble High Court's decision be given to the assessee. Similarly, he will examine the issue with regard to the admission of disallowance made by the assessee. After ascertaining the facts on these two aspects, he will decide the issue in accordance with law.

8. Now we take ITA No.1021/Ahd/2015 (Penalty appeal).

9. The ld.CIT(A) has decided the appeal vide order dated 5.1.2015 i.e. prior to adjudication of the quantum appeal, which is not procedurally correct. It is pertinent to note that sub-clause (iii) of section 271(1)(c) provides mechanism for quantification of penalty. It contemplates that the assessee would be directed to pay a sum in addition to taxes, if any, payable him, which shall not be less than but which shall not exceed three times of the amount of tax sought to be evaded by reason of concealment of income or furnishing of inaccurate particulars of income. In other words, the quantification of the penalty is depended upon the addition made to the income of the assessee. In the present case, the assessee has filed appeal before the CIT(A) against quantum addition. Adjudication of quantum addition was pending before the ld.CIT(A) and the penalty proceedings is solely depended upon the ultimate determination of income, therefore, appeal arising out of imposition penalty cannot be decided before adjudication of quantum appeal. On account of this simple procedural irregularity, we set aside the order of the

ld.CIT(A) and remit this issue to the file of the AO for fresh adjudication. The ld.AO shall first take up the issue of quantum addition in the set aside proceedings and thereafter shall decide whether penalty is to be initiated against the assessee or not.

9. In the result, both appeals of the Revenue are allowed for statistical purpose.

Pronounced in the Open Court on 12th July, 2018.

**Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER**

**Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER**

Ahmedabad; Dated, 12/07/2018