

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

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष  
**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 174/CHNY/2019  
निर्धारण वर्ष / Assessment Year: 2012-13

**M/s. Oceanic Bio Harvest Ltd.,**  
(formerly known as M/s. Amalgam  
Marine Harvest Ltd.),  
No.6, 1<sup>st</sup> Floor, Wellington Estate,  
Ethiraj Salai, Egmore,  
Chennai – 600 008.

**The DCIT,**  
v. Corporate Circle 1(1),  
Chennai.

**PAN: AAACA 6367P**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by  
प्रत्यर्थी की ओर से/Respondent by

: Shri I. Dinesh, Advocate  
: Shri S. Bharath, CIT

सुनवाई की तारीख/Date of Hearing

: 23.03.2021

घोषणा की तारीख/Date of Pronouncement

: 09.04.2021

**आदेश /O R D E R**

**Per G. MANJUNATHA, AM:**

This appeal filed by the assessee is directed against order of learned Commissioner of Income Tax (Appeals)-3, Chennai, dated 10.12.2018 and pertains to assessment year 2012-13.

2. The assessee has raised the following grounds of appeal:-

1.1 The Order of Commissioner of Income Tax(Appeals) is wrong, illegal and is in violation of principles of natural justice and liable to be set aside.

1.2 The Commissioner of Income Tax (Appeals) erred in disposing the appeal ex parte unreasonably ignoring the request for adjournment of the hearing.

2.1 The Commissioner of Income Tax (Appeals) erred in sustaining the disallowance made by the AO without adverting to the detailed factual submissions made before him.

2.2 The Commissioner of Income Tax (Appeals) ought to have considered the difficulties faced by the Assessee in furnishing additional evidences before the Assessing officer and ought to have enlarged the time for submission of the remand report.

3.1 The Commissioner of Income Tax (Appeals) went wrong in upholding the order of the Assessing officer disallowing Rs.20,21,00,000/- u/s. 40A(3) of the IT Act on a notional basis without application of mind.

3.2 The Commissioner of Income Tax (Appeals) ought to have considered the submissions made before him in the proper perspective.

4.1 The Commissioner of Income Tax (Appeals) erred in confirming the action of the Assessing officer in disallowing the very same amount of Rs.20,21,00,000/- u/s.40(a)(ia) of the IT Act also.

4.2 The Commissioner of Income Tax (Appeals) failed to see that the Assessment order is vague and unsustainable in so far as the Assessing officer has not even quantified the amount on which he alleges non-deduction of TDS, but proceeds to disallow the entire expenditure.

4.3 In any event, the Commissioner of Income Tax (Appeals) ought to have seen that the entire amount could not have been subjected to disallowance.

3. The brief facts of the case are that the assessee company is engaged in the business of aqua culture of prawn and prawn seeds. The assessee has filed its return of income for the assessment year 2012-13 on 31.03.2014 declaring a total income of Rs.1,12,76,510/-. The case was taken up for scrutiny and during the course of assessment proceedings, the AO noticed that assessee has debited pond and farm maintenance expenses of Rs.20.21 crores, as compared to a sum of sum of Rs.17.39 lakhs in the previous financial year. Since, there is an exorbitant increase of 115 times in expenses when compared to the earlier year, the AO vide office notice u/s.142(1) of the Income Tax Act, 1961 (hereinafter the 'Act') dated 24.02.2015, has called upon the assessee to file details of expenditure along with supporting bills and vouchers. In response, the authorized representative of the assessee submitted ledger copy of the pond and farm maintenance expenses, however not filed supporting bills and vouchers but claimed that expenditure debited under the head 'pond and farm maintenance expenses' is paid to farmers and allowable as deduction u/s.40A(3) r.w.rule 6DD(e) of the Income Tax Rules, 1962 (hereinafter the 'Rules').

4. The AO, however was not convinced with the explanation furnished by the assessee. According to her, the assessee has not furnished bills and vouchers to establish the genuineness of the transaction. She further observed that as per Rule 6DD(e), for payment to be covered under said rules, it should be made for the purchase of agriculture or forest produce or produce of animal husbandry or dairy or poultry farming or fish or fish products or the produce of horticulture or apiculture. But, however as per the account copy furnished by the assessee, it is seen that the payments have been made to labours for cleaning of pond, for JCB baffling charges, for purchase of sand, bricks, jally, purchase of salt, etc. The AO further observed that the assessee has not provided any evidences to prove that said payments have been made to the cultivator, grower or producer in order to be excluded u/s.40A(3) of the Act, by virtue of Rule 6DD(e). Accordingly, the AO disallowed expenditure debited under the head 'pond and farm maintenance' of Rs.20.21 crores u/s.40A(3) along with 40(a)(ia) of the Act, for non-deduction of tax at source on JCB baffling charges.

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the Id.CIT(A), the assessee vide its letter dated 15.05.2017, has filed additional details on pond preparation and maintenance expenses which have been forwarded to the AO to give her comments. The AO vide letter dated 20.09.2017 has furnished remand report and rejected additional details filed by the assessee on the ground that the assessee had not furnished bills and vouchers to establish the genuineness of the transaction and also failed to file any evidences to prove that impugned payments are outside the scope of Section 40A(3) / 40(a)(ia) of the Act. The Id.CIT(A) has forwarded copy of the remand report to the assessee for its comment. The assessee vide letter dated 15.11.2017 filed the rejoinder and argued that, we were unable to make further submission of the documents which we possess, due to initiation of Corporate Insolvency Resolution process among two of our group companies, based on the insolvency and bankruptcy code. Since the staffs of the assessee company were involved in the process of IBC proceedings, we are unable to file additional evidences before the AO during remand proceedings. However, before we could submit our additional submission and proof of

documents, the AO has submitted her remand report reiterating her comments made on disallowance of expenses u/s.40A(3) of the Act.

6. The Id.CIT(A) after considering relevant submissions of the assessee and also taken note of the remand report issued by the AO, vide office letter dated 01.11.2018, called upon the assessee to furnish relevant evidences in support of the expenditure claimed at Rs.20.21 crores under the head 'pond and farm maintenance'. In spite of another opportunity to produce evidences, the assessee has failed to file any evidence in support of huge expenditure debited under the head 'pond and farm maintenance'. Therefore, the Id.CIT(A) opined that the assessee did not have any evidences in support of the expenditure and hence sustained addition made towards disallowance of pond and farm maintenance expenses u/s.40A(3) / 40(a)(ia) of the Act. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

7. The Id.AR for the assessee submitted that the Id.CIT(A) has dismissed the appeal filed by the assessee without giving

adequate opportunity of hearing to produce necessary evidences in support of expenditure debited under the head 'pond and farm maintenance expenses'. Therefore, one more opportunity may be given to the assessee to go back to the AO to file necessary evidences in support of expenses debited into the profit & loss account. The Id.AR further submitted that even during assessment proceedings, the AO has not given adequate opportunity of hearing to produce necessary evidences. Further, the assessee was pre-occupied with IBC proceedings in connection with two of its group companies and hence, could not gather necessary evidences to support the expenditure. Therefore, in all fairness, the issue may be set aside to the file of the AO to reconsider the issue.

8. The Id.DR on the other hand strongly supporting order of the CIT(A) submitted that the assessee has failed to file any evidences before AO or Id.CIT(A) to justify the claim of expenditure. Further, even during assessment proceeding no evidence has been filed despite the AO has called upon the assessee to file evidences. Further, during the appellate proceedings, the Id.CIT(A) has given another opportunity to the

assessee to produce necessary evidences but the assessee neither produced evidences nor justified the claim of expenditure. Even before the Tribunal, no evidence has been placed on record. But the assessee is seeking restoration of appeal to the AO without bringing on record any evidences to justify the claim of expenses. Therefore, there is no merit in the arguments taken by the Id.AR for the assessee to set aside the appeal to the file of the AO and hence the addition made by the AO and sustained by the Id.CIT(A) should be confirmed.

9. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. Admittedly, the assessee has incurred pond and farm maintenance expenses of Rs.20.21 crores and such expenditure has been paid by cash in contravention to provision of section 40A(3) of the Act. It is also an admitted fact that during assessment proceedings, appellate proceedings and even during remand proceedings no evidence has been placed on record including bills and vouchers to establish the genuineness of transaction. Further, although the assessee claims that it has been prevented to file necessary evidences before the authorities,

but on perusal of orders passed by the AO and Id.CIT(A), we find that the AO as well as the CIT(A) has given sufficient and adequate opportunity of hearing to the assessee to produce necessary evidences. In fact, during appellate proceedings, the Id.CIT(A) has forwarded additional details filed by the assessee to the AO for her comments. During remand proceedings, the Id.AO has called upon the assessee to file proof / evidences for having incurred pond and maintenance expenditure. Despite giving various opportunities, the assessee has failed to file any evidences. Further, during appellate proceedings, the Id.CIT(A) has given one more opportunity vide his office letter dated 01.11.2018 to furnish relevant evidences in support of the expenditure. Once again the assessee has failed to file any evidences. The said failure is continued even before us. The assessee neither produced any evidences nor justified claim of expenditure under the head 'pond and farm maintenance' but seeks restoration of appeal to the file of the AO for further verification, in light of the argument that the assessee was prevented to file necessary evidences before the authorities on the ground that the staffs of assessee were pre-occupied with IBC proceedings of two of its group companies. We find that the

reasons given by the assessee for not filing evidences in support of expenditure debited under the head 'pond and farm maintenance' cannot be accepted because right from assessment proceedings to appellate proceedings, the assessee has failed to utilize the opportunities given by the authorities to produce the evidences. Had the assessee is having evidences in support of the expenditure, it would have furnished such evidences before the AO or CIT(A) to justify its claim. At least, the assessee would have filed said evidences before us to prove its case. But, even before us the assessee neither produced any evidences nor justified its claim. Therefore, from the above, it is very clear that the assessee is not having any evidences or bills and vouchers to establish the genuineness of the transactions. Therefore, we are of the considered view that attempt made by the assessee to restore the appeal to the file of the AO for fresh consideration is nothing but an attempt to drag the issue without any purpose. Hence, the request made by the assessee for setting aside the appeal to the file of the AO is rejected.

10. Having said so, let us examine the nature of expenditure incurred by the assessee under the head 'pond and farm

maintenance expenses'. Admittedly, the assessee has incurred huge expenditure of Rs.20.21 crores and such expenditure has been incurred in cash in contravention to provision of section 40A(3) of the Act, which is evident from the fact that the ledger account copy filed by the assessee clearly shows that majority of the payments have been made in excess of Rs.20,000/- in cash in violation of section 40A(3) of the Act. Although, the assessee claimed before the AO that said payments have been made to farmers, but the AO has negated arguments of the assessee in light of evidences filed during the course of assessment proceedings that impugned payments have been made to labours for cleaning of pond, for JCB baffling charges, for purchase of sand, bricks, jally, purchase of salt. No evidence has been placed on record to prove that payments have been made to cultivator, grower or producer as per Rule 6DD(e) in order to exclude said payments from the provision of section 40A(3) of the Act. Further, as per Rule 6DD(e), in order to exclude cash payment from the purview of section 40A(3) of the Act, said payment should be made for purchase of agriculture or forest produce or produce of animal husbandry or dairy or poultry farming or fish or fish products or the produce of horticulture or apiculture. But, as

per the ledger account copy furnished by the assessee, all payments have been made to labours for cleaning of pond and JCB baffling charges. Therefore, we are of the considered view that expenditure debited under the head 'pond and farm maintenance expenses' cannot come under the exclusion provided under Rule 6DD(e) of IT Rules, 1962. Therefore, we are of the considered view that there is no error in the findings recorded by the AO and affirmed by the Id.CIT(A) to make disallowance of expenses u/s.40A(3) / 40(a)(ia) of the Act. Hence, we are inclined to uphold the findings of the CIT(A) and dismiss the appeal filed by the assessee.

9. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the court on 9<sup>th</sup> April, 2021 at Chennai.

Sd/-

(वी दुर्गा राव)

**(V. Durga Rao)**

न्यायिक सदस्य/Judicial Member

Sd/-

(जी. मंजुनाथ)

**(G. Manjunatha)**

लेखा सदस्य /Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 9<sup>th</sup> April, 2021

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- |                        |                          |                              |
|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT    | 5. विभागीय प्रतिनिधि/DR  | 6. गार्ड फाईल/GF.            |