

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.: **66, 67, 68 & 69/Chny/2018**
निर्धारण वर्ष / Assessment Years: 2009-10 to 2011-12 & 2013-14

M/s. Popular Foundations Pvt. Ltd., Assistant Commissioner of
No. 32/1, Kamatchi Apartments, v. Income Tax,
10th Avenue, Ashok Nagar, Central Circle 3(4),
Chennai – 83. Chennai.

[PAN: AABCP 6433G]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. R. Sivaraman, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri. Abani Kanta Nayak, CIT

सुनवाई की तारीख/Date of Hearing : 01.12.2021

घोषणा की तारीख/Date of Pronouncement : 08.12.2021

आदेश / O R D E R

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

These 4 appeals filed by the assessee are directed against the common order of the Commissioner of Income Tax (Appeals)-19, Chennai dated 25.10.2017 and pertains to assessment years 2009-10 to 2011-12 & 2013-14. Since, the facts are identical and issues are common, for the sake of convenience all these appeals were heard together and are being disposed off, by this consolidated order.

2. The assessee has more or less raised common grounds for all assessment years. Therefore for the sake of brevity, grounds of appeal filed for the assessment year 2009-10 in ITA No. 66/Chny/2018 are reproduced as under:

1 The order of Learned CIT(A) dated 25.10.2017 for the Assessment year 2009-10 is contrary to the facts and circumstances of the case and is opposed to the principles of equity, justice and fair play

2 The Learned CIT(A) erred in disallowing Rs. 6,42,329/- u/s. 40A(3) of the Income Tax Act, 1961 ("Act") being cash payments made towards purchase of jelly, sand, bricks etc., without considering the nature, line of business of the Appellant.

3 The Learned CIT(A) failed to appreciate that the amount of Rs. 6,42,329/- had been incurred by the Appellant by entering into transactions with unorganized vendors which is in the ordinary course of business of the Appellant,

4 The Learned CIT(A) erred in disallowing Rs. 5,00,000/- u/s. 68 of the Act without considering the detailed explanations, submissions and evidences placed on record by the Appellant.

5 Without prejudice to the above, the Learned CIT(A) erred in charging interest u/s. 234A, 234B and 234C of the Act.

On the strength of the abovementioned grounds and such other grounds that may be submitted before or at the time of hearing of the Appeal, the Hon'ble ITAT may be pleased to set aside the order of the CIT-(A) dated 25.10.2017 and thus render justice."

3. The brief facts of the case are that the assessee company is engaged in the business of civil construction, filed its return of income for all these assessment years u/s. 139 of the Income Tax Act, 1961 (herein after 'the Act'). A search and

seizure action u/s. 132 of the Act, was carried out at the business premises of the assessee on 17.07.2014. Consequent to search, the assessments have been completed u/s. 143(3) r.w. 153A of the Act on 19.12.2016, where the AO has made additions towards disallowance of cash payments in excess of prescribed limit u/s. 40A(3) of the Act. The AO had also made additions towards unsecured loans received by the assessee u/s. 68 of the Act for Rs. 50 lakhs on the ground that the assessee has failed to prove identity, genuineness of transaction and credit worthiness of the parties.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld. CIT(A). Before the Ld. CIT(A), the assessee has challenged additions made by the AO towards disallowance of cash payments u/s. 40A(3) of the Act, on the ground that assessee has made cash payments for purchase of materials on Saturdays/Sundays and also in a place where the banking facilities was not available at the given time. Therefore, genuine payments made for the purpose of business cannot be disallowed u/s. 40A(3) of the Act. The assessee had also challenged additions made by the AO towards unsecured loans u/s. 68 of the Act, on the ground

that it has filed necessary evidences including confirmation letter from the creditor to prove identity, genuineness of transactions and credit worthiness of parties. Further, said loans has been treated as cessation of liability and offered to tax u/s. 41(1) of the Act for the assessment year 2014-15. Therefore, no additions could be made towards unsecured loan for the impugned assessment year under consideration.

5. The Ld. CIT(A) after considering relevant submissions of the assessee and has also taken various facts brought out by the AO, has confirmed additions made towards disallowance of cash payments u/s. 40A(3) of the Act by holding that expenditure incurred by the assessee in cash in contravention of Rule 6DD of the IT Rules, 1962 does not come under any exception as provided therein and thus, even if genuineness of said expenditure was not in doubt, such payments needs to be disallowed, when cash payments exceeds prescribed limit provided u/s. 40A(3) of the Act. As regards addition towards unsecured loans u/s. 68 of the Act, the Id. CIT(A) observed that the assessee has failed to file confirmation from the creditors to prove identity, genuineness of transactions and creditworthiness of the parties, and thus, failed to discharge its

onus and hence, there is no error in the reasons given by the AO to make additions towards unsecured loan u/s. 68 of the Act. Accordingly, confirmed additions made by the AO. Aggrieved by the Ld. CIT(A), the assessee is in appeal before us.

6. The first issue that came up for our consideration for all assessment years is disallowance of cash payments u/s. 40A(3) of the Act. The facts with regard to impugned dispute are that during the course of search, it was noticed that the assessee has made certain payments in cash in excess of prescribed limit for purchase of sand, blue metal, bricks and other material, and accordingly, during the course of assessment proceedings, the AO called upon the assessee to explain as to why cash payments made in contravention of provisions of section 40A(3) r.w.r. 6DD of Income Tax Rules, 1962 cannot be disallowed. In response, the assessee submitted that it is common in any construction business that the payments for sand, bricks, blue material and other materials sourced in place of work are generally purchased by cash, because of various reasons, including insistence of cash by the trader, non availability of banking facilities and also

emergency situation which warrant payment of cash. Therefore, justified payment of cash in excess of prescribed limit on the ground that all the payments made for purchase of materials in excess of prescribed limit are genuine expenditure which are supported by necessary evidences and further all payments are either made on Saturday/Sunday when the banks was closed and also where the places are not served by banking facilities. The AO, however was not convinced with explanation furnished by the assessee and according to him even genuineness of payments are not in doubt, the payments in excess of prescribed limit cannot be allowed unless such payments are covered under Rule 6DD of I.T. Rules, 1962.

7. The Ld. AR for the assessee referring to paper book filed by the assessee submitted that if you go through nature of timing of payments for purchase of material in cash, it is abundantly clear that the assessee has made payments for purchase of certain material on Saturday/Sunday to meet emergency requirements for completion of work and further, some payments are made to material purchase which are falling under exempt category. Therefore, he submitted that even though some payments are not falling under exempt

category, but said payments are made in emergency circumstances, keeping in mind requirement of procuring the material for the purpose of completion of work. Therefore, he submitted that unless the AO doubts genuineness of payments, merely for violation of provisions of section 40A(3) of the Act, he cannot make disallowance when assessee explains reasons for making cash payments.

8. The Ld. DR on the other hand supporting the order of the Id. CIT(A) submitted that as per the provisions of section 40A(3) of the Act, even genuine payments for purchase of materials and procurement of services are covered, if such payments is in excess of prescribed limit, unless such payments comes under exception provided under Rule 6DD of IT Rules, 1962. The AO, as well as Id. CIT(A) have brought out clear facts to the effect that payments made by the assessee for purchase of materials does not come under any exception provided under Rule 6DD of IT Rules, 1962 and thus, there is no error in the reasons given by the Ld. CIT(A) to sustain the additions made by the AO and his order should be uphold.

9. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. Admittedly, provisions of section 40A(3) of the Act deals with cash payments for purchase of materials and services in excess of prescribed limit. As per said provisions, if cash payment is made in excess of prescribed limit, then same cannot be allowed as deduction while computing income from business or profession. Rule 6DD of IT Rules, 1962 provided certain exemptions for cash payments, as per said Rules, only payments made for purchase of material and other products and also payments made in a village or town, which on the date of such payment is not served by any bank. The said rules had also provided exception for purchase of products manufactured or processed without aid of power in cottage industry to the producer of such product. If you examine facts of the present case, in light of provisions of section 40A(3) of the Act r.w.r 6DD, we find that the AO has not doubted genuineness of payments made by the assessee in cash for purchase of materials. We further, noted that out of total payments made by the assessee, most of the payments are made on Saturday/Sunday in a village or town, which on the date of said payments is not served by any bank. Further,

certain payments made for purchase of materials like river sand from a village which was not served by any banking facilities. Therefore, those payments, i.e., payments made on holidays being Saturday/Sunday, and on the date of such payment, place is not served by any bank, are covered under rule 6DD of IT Rules, 1962 and thus, same is outside the scope of provisions of section 40A(3) of the Act. In case of payments made for purchase of river sand in a village, it was an explanation of the assessee that said payments is made for purchase of product manufactured or processed without aid of power. Since, the processing of river sand is without aid of power and further such industry is in the nature of cottage industry, payment made for procurement of river sand comes under Clause (f) of Rule 6DD of IT Rules, 1962, and thus, same cannot be disallowed u/s. 40A(3) of the Act. In so far as remaining payments made which are not covered under any exception, we find all these payments are made to the traders which are supported by necessary evidence, and further such payments have been made at the instances of traders, that too in an emergency situation which compelled the assessee to make payments in cash. Therefore, we are of the considered view that even though few payments is covered u/s. 40A(3) of

the Act, because of peculiar nature of business of assessee, we find that those payments cannot be considered for disallowance u/s. 40A(3) of the Act. To sum up, all payments made by the assessee for purchase of materials in excess of prescribed limit provided u/s. 40A(3) of the Act cannot be disallowed. Hence, we direct the AO to delete the additions made towards disallowance of cash payments u/s. 40A(3) of the Act.

10. The next issue that came up for our consideration from ground no 4 of assessee appeal for assessment year 2009-10 is additions made towards unsecured loans u/s. 68 of the Act. The fact with regard to impugned dispute are that, the assessee claimed to have received a sum of Rs. 50 lakhs trade advance from M/s. Park Field Developers & Builders Pvt. Ltd., and such loan was outstanding for more than three years. The assessee has classified trade advance received from above party as unsecured loan because of time gap. During the course of assessment proceedings, the AO called upon the assessee to file necessary evidences to prove identity, genuineness of transactions and creditworthiness of the parties. The assessee has filed confirmation letter from the

creditor. The AO did not accept confirmation letter filed by the assessee and according to him, such confirmation was not complete and further there was no proper address of the creditor. Therefore, he opined that unsecured loans received from M/s. Park Field Developers & Builders Pvt. Ltd., is not explained and thus, he has made additions u/s. 68 of the Act.

11. The Ld. AR for the assessee submitted that the Ld. CIT(A) has erred in not appreciating the fact that the assessee has discharged its onus to prove identity, genuineness of transaction and creditworthiness of parties. The Ld. AR further submitted that even otherwise, the assessee has treated said unsecured loan as cessation of liability and has offered the same for tax u/s. 41(1) of the Act for the assessment year 2014-15, where the AO has considered the issue and has accepted the income offered by the assessee. Therefore, once again addition cannot be made for the impugned loan for the current financial year.

12. The Ld. DR, on the other hand submitted that for the year under consideration sum received from creditor was unexplained, because the assessee has not filed necessary

evidence to establish identity, genuineness of transaction and creditworthiness of the parties.

13. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The assessee has filed confirmation letter from the creditor to prove identity, genuineness of transactions and creditworthiness of parties. The assessee had also filed ledger extract to prove that said loan was received by cheque. The assessee had also filed data of creditor company available in the website, of Ministry of Corporate Affairs, Government of India, as per which said company was in active status. From the above, it is very clear that the assessee has filed necessary evidences to prove identity, genuineness of transactions and creditworthiness of parties. Therefore, we are of the opinion that once assessee discharges its burden, then the AO cannot make additions towards unsecured loans u/s. 68 of the Act as unexplained credit, unless he proves otherwise. Further, it is a matter of fact that such unsecured loans has been treated as cessation of liability and offered to tax u/s. 41(1) of the Act for the assessment year 2014-15. This fact has not been disputed by the AO. Therefore, once a

particular sum is considered for taxation in subsequent years then, said loan cannot be once again treated as income of the assessee for the impugned assessment year. Therefore, we are of the considered view that the AO has completely erred in making additions towards unsecured loans received from M/s. Park Field Developers & Builders Pvt. Ltd., u/s. 68 of the Act. The Ld. CIT(A) without appreciating facts as simply confirmed additions made by the AO. Hence, we set aside the order passed by the Ld. CIT(A) and direct the AO to delete additions made towards unsecured loans u/s. 68 of the Act.

14. In the result, the appeals filed by the assessee for all the assessment years are allowed.

Order pronounced in the court on 08th December, 2021 at Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /Vice President

Sd/-
(जी. मंजुनाथ)
(G. MANJUNATHA)
लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 08th December, 2021

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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