

IN THE INCOME TAX APPELLATE TRIBUNAL , 'B' BENCH, CHENNAI

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER  
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

I.T.A.No.2781 /Chny/2018

(Assessment Year: 2015-16)

Mr. Ashwin Barai 21, Canteen Street, Puducherry-605 001.	Vs	The Income Tax Officer, Ward-1, Puducherry.
PAN: AAHPB 1205B		
(/Appellant)		(/Respondent)

/ Appellant by	:	Mr. S.Sridhar, Advocate
/Respondent by	:	Mr. V.Nandakumar, JCIT

/Date of hearing	:	14.07.2022
/Date of Pronouncement	:	27.07.2022

**आदेश / ORDER**

**PER G. MANJUNATHA, AM:**

This appeal filed by assessee is directed against order of learned Commissioner of Income Tax (Appeals), Puducherry, dated 31.08.2018 and pertains to assessment year 2015-16.

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

*“ 1. The order of The Commissioner of Income Tax (Appeals), Puducherry dated 31.08.2018 in I.T.A.No.86/CIT(A)-PDY/2017-18 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.*

*2. The CIT (Appeals) erred in confirming the disallowance of Rs.2,58,98,591/- on the presumption of cash purchases while applying the provisions of section 40A(3) of the Act and consequently erred in adding back such sum in the computation*

*of taxable total income without assigning proper reasons and justification.*

*3. The CIT (Appeals) failed to appreciate that the provisions of section 40A(3) of the Act had no application to the facts of the case and ought to have appreciated that the franchise agreement was completely misinterpreted, thereby vitiating the decision rendered from para 5.4 to para 5.9.2.*

*4. The CIT (Appeals) failed to appreciate that the distinction between principal to principal and principal to agent for understanding the nature of the transaction was completely lost sight of and ought to have appreciated that the elaborate submissions made in this regard was brushed aside on flimsy reasons, thereby vitiating the related findings.*

*5. The CIT (Appeals) failed to appreciate that the sustenance of the addition made on invoking section 40A(3) of the Act on various facets was wrong, erroneous, unjustified, incorrect and not sustainable in law.*

*6. The CIT (Appeals) failed to appreciate that in any event commercial transactions were outside the scope of the provisions of section 40A(3) of the Act especially in view of the proviso below section 40A(3A) of the Act, thereby vitiating related findings.*

*7. The CIT (Appeals) failed to appreciate that further in any event the applicability of exceptional circumstances statutorily prescribed was not examined properly while vitiating the related findings in the impugned order.*

*8. The CIT (Appeals) erred in sustaining the shifting of head of income for the rent received from another company and consequently erred in sustaining the computation of such income under the head 'other sources' by restricting the expenses incurred in relation thereto without assigning proper reasons and justification.*

*9. The CIT (Appeals) failed to appreciate that the shifting of the head of income was wholly unjustified and further ought to have appreciated that in any event the provisions of section 57(iii) of the Act were wrongly understood while restricting the expenses*

*for earning the said income, thereby vitiating the related findings.*

*10. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.”*

3. Brief facts of the case are that the assessee is proprietor of Honey Dew Foods, which is engaged in the business of trading in hot breads. The assessee is a franchise holder for M/s. B & M Hot Breads Pvt.Ltd., which is manufacturing and selling hot breads. The assessee has entered into agreement with M/s. B & M Hot Breads Pvt.Ltd. for exclusive franchise rights for selling hot breads. As per said agreement, the assessee is entitled to sum of Rs.90,750/- per month or 8% of net sales after deduction of taxes, if any, whichever is higher as commission for selling hot breads. The assessee had accounted purchases and sales and declared profits in books of account. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has made cash payment in excess of prescribed limit u/s.40A(3) of the Act, for purchases and consequently, disallowed total purchases u/s.40A(3) amounting to Rs.2,58,98,591/- for payment in cash in excess of prescribed limit. On appeal, the learned CIT(A)

confirmed additions made by the Assessing Officer on the ground that the assessee has violated provisions of section 40A(3) of the Act, and further, payments made by the assessee for purchases does not cover under any of exceptions provided under Rule 6DD of I.T. Rules, 1962. Aggrieved by the learned CIT(A) order, the assessee is in appeal before us.

4. The learned A.R. for the assessee submitted that the learned CIT(A) erred in confirming additions made by the Assessing Officer towards disallowance of purchases u/s.40A(3) of the Act, without appreciating fact that although, the assessee has accounted purchases as his own purchases, but in principle, the assessee is acting as commission agent and earns 8% commission on net sales effected for every month. Therefore, provisions of section 40A(3) cannot be applied in the given facts & circumstances of the case. The learned A.R. further submitted that the assessee could not explain its case before the Assessing Officer with necessary evidence and therefore, issue may be set aside to file of the Assessing Officer to give one more opportunity of hearing to the assessee to explain his case.

5. The learned D.R, on the other hand, supporting order of the learned CIT(A) submitted that there is no dispute with regard to cash payments in excess of prescribed limit. It is also not in dispute that the assessee has accounted transactions with supplier as his own purchases. Therefore, question of applicability of provisions of section 40A(3) cannot be doubted and hence, other arguments advanced by the assessee that he is only a commission agent, but not trading independently is an afterthought, to circumvent application of provisions of section 40A(3) of the Act, and thus, there is no reason to set aside the issue to the file of the Assessing Officer for further verification.

6. We have heard both the parties, perused material available on record and gone through orders of the authorities below. There is no dispute with regard to fact that the assessee has accounted purchases in its books of account and made cash payments for said purchases in excess of prescribed limit provided u/s.40A(3) of the Act. Therefore, the Assessing Officer is right in applying provisions of section 40A(3) of the Income Tax Act, 1961, to cash payments for purchases in excess of prescribed limit. However, it was arguments of the assessee

before us that he is working as commission agent for the principal for selling hot breads manufactured by M/s. B & M Hot Breads Pvt.Ltd. and earns only 8% commission on net sales, after all taxes. Therefore, even though, transactions has been treated as purchases and sales, but in fact, he earns only commission income and thus, provisions of section 40A(3) cannot be applied.

7. Having heard both the sides and considered relevant materials on record, we find that there is no dispute with regard to applicability of section 40A(3) of the Act, when cash payments made for any expenses in excess of prescribed limit, however, in each and every case provisions of section 40A(3) cannot be applied, because, real nature of transactions need to be ascertained. In case, the assessee acts as commission agent and earns commission on total sales, then even if, for practical purposes, transactions are treated as purchase & sales, then for the purpose of provisions of section 40A(3) of the Act, real nature of transaction needs to be ascertained. In this case, the assessee claims that though he has reported purchases as his own purchases, but said purchases is made on behalf of principal, and his income is only

commission on net sales. In this regard, the assessee has placed agreement between the M/s. B & M Hot Breads Pvt.Ltd. and the assessee. These fact needs to be verified by the Assessing Officer to decide applicability of provisions of section 40A(3) of the Act. Hence, we set aside the issue to the file of the Assessing Officer and direct the Assessing Officer to reconsider the issue in light of averments of the assessee and also agreement between the parties and decide applicability of provisions of section 40A(3) of the Income Tax Act, 1961.

8. In the result, appeal filed by the assessee is treated as allowed for statistical purposes

Order pronounced in the open court on 27<sup>th</sup> July, 2022

Sd/-

Sd/-

(V.Durga Rao)

(G.Manjunatha)

Judicial Member

Accountant Member

Chennai,

Dated 27<sup>th</sup> July, 2022

DS

Copy to:

1. Appellant  
4. CIT

2. Respondent 3. CIT(A)  
5. DR

6. GF.