

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : A : NEW DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.341/Del/2016  
Assessment Year: 2010-11

Barnala Steel Industries Ltd.,  
Village Vehlana,  
Meerut Road,  
Muzaffarnagar.

Vs JCIT,  
Range-2,  
Muzaffarnagar.

PAN: AABCB2772Q

(Appellant)

(Respondent)

Assessee by	:	Shri Ankit Gupta, Advocate
Revenue by	:	Shri S.L. Anuragi, Sr. DR
Date of Hearing	:	04.02.2020
Date of Pronouncement	:	17.02.2020

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 23<sup>rd</sup> November, 2015 of the CIT(A)-Muzaffarnagar, relating to assessment year 2010-11.

2. The first issue raised by the assessee in the grounds of appeal relates to the addition of Rs.3,52,799/- made by the AO u/s 40A(3) of the IT Act.

3. Facts of the case, in brief, are that the assessee is a company engaged in the business of manufacturing of MS bar and TMT. It filed its return of income on 13<sup>th</sup> October, 2010 declaring the total income at Rs.1,48,33,980/- and an amount of Rs.2,22,85,162/- as book profit u/s 115JB of the Act. During the course of assessment proceedings, the AO observed from the various details filed by the assessee that the assessee has violated the provisions of section 40A(3) of the Act for the purchases from the above parties:-

Date of Payment	Name of Supplier	Amount
03.11.2009	Mishra Coal Traders	76107/-
05.11.2009	Khan Coal Traders	92950/-
10.11.2009	Khan Coal Traders	91182/-
10.11.2009	Vikas Distributors	92560/-

4. He, therefore, asked the assessee to explain as to why the same should not be added u/s 40A(3) of the Act. It was explained by the assessee that the grade of coal supplied by the above named parties was not readily available with the other suppliers. Since the assessee was in urgent need of the above narrated quality of coal to mix with the other quality of coal in order to save losses/quality losses/production losses and since the suppliers expressed their inability to supply without cash payments, therefore, it had no option, but, to purchase in cash. The AO was not satisfied with the explanations given by the assessee and made an addition u/s 40A(3) of the Act.

5. In appeal, the Id.CIT(A) upheld the action of the AO. While doing so, he observed that the assessee, during the assessment proceedings, had admitted making cash payments exceeding Rs.20,000/- on a single day to one person. However, during the appeal proceedings, the assessee has taken an altogether different stand and submitted that none of the payments exceeded Rs.20,000/- on a single day. He observed from the cash book that the payments were made in cash exceeding Rs.20,000/-. So far as the business exigency is concerned, the Id.CIT(A) noted that the assessee could not prove the business exigency as covered under Rule 6DD of IT Rules. He accordingly upheld the action of the AO.

6. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

7. We have considered the rival arguments made by both the sides and perused the record. It is an admitted fact that the assessee has made payment in cash exceeding Rs.20,000/- to the three parties mentioned at para 3 above. The assessee has taken different stands before the AO and the CIT(A). Nothing was produced before us to substantiate that the suppliers had demanded cash and refused to accept DD/pay order or account payee cheque for selling the goods to the assessee. The assessee has only made a general remark that due to business exigencies he has to purchase the coal from the above suppliers. Since the same is not backed by any documentary evidence to prove the commercial exigency and demand from the said suppliers to supply coal only in cash and since the assessee has violated the

provisions of section 40A(3), we do not find any infirmity in the order of the CIT(A) on this issue. Accordingly, the order of the CIT(A) is upheld and the ground raised by the assessee is dismissed.

8. The second issue raised by the assessee in the grounds of appeal relates to the addition of Rs.1,37,052/- on account of interest paid to financial institutions on hire purchase u/s 40(a)(ia).

9. After hearing both the sides, we find the AO disallowed an amount of Rs.1,37,052/- being non-deduction of tax from interest paid on loan from Tata Capital. Since the assessee paid interest to a non-banking financial institution and did not deduct TDS as per the provisions of section 194A, the AO made disallowance of Rs.1,37,052/-. In appeal, the ld.CIT(A) upheld the action of the AO.

10. It is the submission of the ld. Counsel for the assessee that given an opportunity, he is in a position to substantiate before the AO that the recipient company has filed its return of income and declared the said interest amount in its income and paid due taxes thereon as per the provisions of section 201(1A). Considering the totality of the facts of the case and in the interest of justice we deem it proper to restore the issue to the file of the AO with a direction to grant one opportunity to the assessee to substantiate that the recipient company has filed its return of income declaring the said interest amount in the income and paid due taxes thereon and decide the issue as per fact and law keeping in mind the

provisions of section 201(1A). We hold and direct accordingly. The ground raised by the assessee is accordingly allowed for statistical purposes.

11. The next issue raised in the grounds of appeal relates to the disallowance of Rs.1 lakh on account of weight and rate difference.

12. After hearing both the sides, we find the AO made ad hoc addition of Rs.1 lakh on account of weight and rate difference out of Rs.4,96,215/- debited by the assessee in the Profit & Loss Account on the ground that the assessee failed to provide any documentary evidence for such claim.

13. In appeal, the Id.CIT(A) upheld the action of the AO on the ground that neither during assessment proceedings nor during appeal proceedings the assessee filed any evidences to establish the basis of arriving at the figure of Rs.4,96,215/- debited by it in the Profit & Loss Account. Even during the hearing before us also the Id. Counsel could not substantiate the same. Under these circumstances, we do not find any infirmity in the order of the CIT(A) confirming the addition of Rs.1 lakh made by the AO. Therefore, we uphold the same. This ground raised by the assessee is dismissed.

14. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

The decision was pronounced in the open court on 17.02.2020.

Sd/-

(BHAVNESH SAINI)  
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)  
ACCOUNTANT MEMBER

Dated: 17<sup>th</sup> February, 2020.

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1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi