IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 4008/DEL/2018
[Assessment Year: 2014-15

DCIT, Circle-25(1), New Delhi.	Vs	Laxmipathi Balaji Sugar and Distilleries pvt. Ltd., 1670, 1st Floor, Kucha Dakhini Rai, Daryaganj, New Delhi. PAN- AADCT2450M
APPELLANT		**RESPONDENT**
Assessee represented by	**None**	
Department represented by	**Ms. Sarita Kumari, CIT-DR**	
Date of hearing	**18.10.2022**	
Date of pronouncement	**28.11.2022**	

O R D E R

PER KUL BHARAT, JM:

This appeal, by the Revenue, is directed against the order of the learned Commissioner of Income-tax (Appeals)-32, New Delhi, dated 29.12.2017, pertaining to the assessment year 2014-15. The Revenue has raised following grounds of appeal:

"1. The impugned order of the CIT(A) is bad in law as well as on facts of the case."

"2. On the facts and in the circumstances of the case and in law, the Ld. C1T(A) has erred in deleting the addition of Rs. 180,82,22,234/- made on account of disallowance u/s. 40A(3) by ignoring the fact that the addition made is as per provision mentioned in CBDT Circular No. 220 dated 31.05.1977 and that the assessee has failed to provide or mention any such exigencies faced by it as enunciated in the circular. Further, one of the primary observation which needs to

be drawn in the assessee's case is that the assessee has not supported any of the transaction entered into by them either by way of bank statement, bills or vouchers"

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 40,99,90.801/- u/s. 68 of the IT Act by ignoring the fact that as mandated by the IT Act the assessee in this case has failed to provide the genuineness of the transaction and creditworthiness of the lender from whom loans were received"

4. The Appellant craves leave or reserving the right to amend, modify, alter, add or forego any of the Ground(s) of Appeal at any time before or during the hearing of this appeal."

2. Facts giving rise to the present appeal are that in this case the assessee filed its return of income through electronic mode on 31.3.2016 declaring loss of Rs. 2,59,52,223/-. Case of the assessee was picked up for scrutiny assessment and the assessment u/s 143(3) of the Income-tax Act, 1961 (in short "the Act") was framed on 28.12.2016. The Assessing officer made addition on account of purchases made in cash amounting to Rs. 1,80,82,22,234/- by invoking the provisions of Section 40A(3) of the Act and further made addition of Rs. 40,99,90,801/- by invoking the provisions of section 68 of the Act. Thus, the Assessing Officer assessed income at Rs. 2,19,22,60,810/- against the declared loss of Rs. 2,59,52,223/-.

3. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals), who after considering the submissions deleted the additions. Aggrieved against this the Revenue is in appeal before this Tribunal.

4. At the time of hearing no one attended the proceedings on behalf of the assessee. Notices of hearing sent by speed post have been returned by the postal authorities. Despite various opportunities, no one attended the proceedings on behalf of the assessee. Therefore, the appeal was taken up for hearing in the absence of the assessee and is being decided on the basis of the material available on record.

5. Ground No. 1 is general in nature, needs no separate adjudication.

6. Ground no. 2: Ground No. 2 is against deletion of addition of Rs. 180,82,22,234/- made on account of disallowance u/s 40A(3) of the Act. Learned CIT(DR) relied upon the finding of Assessing Authority and contended that the learned CIT(Appeals) erred in deleting the addition.

7. We have heard the learned CIT(DR) and perused the material available on record. Undisputedly the Assessing Officer made addition by invoking the provisions of Section 40A(3) of the Act read with Rule 6DD(j) of the income-tax Rules, 1962 (in short "Rules"). For the sake of clarity, both these provisions, as stood at the relevant time, are reproduced herein below:-

> "[**Expenses or payments not deductible in certain circumstances**.
>
> 40A(1) ……. .
>
> …… .
>
> (3) Where the assessee incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees, no deduction shall be allowed in respect of such expenditure.

Rule 6DD(j):

6DD. No disallowance under sub-section (3) of section 40A shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-section (3A) of section 40A where a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees in the cases and circumstances specified hereunder, namely:-

…… .

…… .

(j) where the payment was required to be made on a day on which the banks were closed either on account of holiday or strike."

8. The contention of the assessee before the learned CIT(Appeals) was that the Assessing officer grossly erred in law and on facts for applying provisions of Section 40A(3) read with Rule 5DD(j). Undisputedly, the assessee made purchases from farmers of their agricultural produce. Hence, the transaction would not be hit by Section 40A(3) read with Rule 6DD(j) as a specific exception is provided under Rule 6DD(e). For the sake of clarity Rule 6DD(e) is reproduced here-in-below:

"Rule 6DD(e):

(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;"

9. In this backdrop the finding of learned CIT(Appeals) is to be tested. The relevant content of his finding is reproduced herein below:

> "*Thus, from the extant law - provisions of Section 40A (3) and Rule 6DD it is clear that by virtue of sub-rule (e) (i) of Rule 6DD cash expenditure / payment made by an assessee for purchase of 'agricultural produce' is out of the ambit of disallowance u/s 40A (3). In the present case, the appellant has made cash payments towards purchase of sugarcane directly from the farmers, the sugarcane cultivators. Hence, as per the extant law, no disallowance in this regard is warranted and the appellant's contention as borne out from the available records appears plausible.*
>
> *Further, it is incomprehensible as to the reasoning made thereon in the impugned order wherein on one hand it is mentioned inter alia, ".. The most important thing here which must be noted that India is not living in 20th century even the remotest of the village has access to bank. In this era of financial inclusion where a company is having transactions of more than 200 crore cannot claimed the benefit of rule 6DD without satisfying the pre-condition laid in the Income Tax Act, 1961. At this juncture it would be relevant to observe that the assessee has huge bank balance but have failed to show a single transaction through banking channel. There is not a remotest of doubt that the assessees indulging in sum other practice other than business profession. From 1977 to 2014 there has been a sea change in financial sector of Indian Economy. Assessee can not resort to the benefit of Rule 6DD without putting forth the concrete reasons- which compelled assessee; entering\ into cash- transaction..." whereas on the other hand it is mentioned inter alia, .After examination of reply of the assessee, it was observed that assessee has entered into cash purchase which needs to be analyzed under the CBDT circular no. 220 dated 31.05.1977 which is the landmark circular determining the precondition where an assessee can entered into CASH transactions..." The extant provisions of the Act and Rules in this regard have been thrown to-the winds! While certainly- there has been a sea change in the spread of rural banks in the country over the years however it is also a fact that the extant provisions of law [40A (3) r w Rule 6DD including exceptions thereto] have evolved over time - the disallowance of cash expenditure beyond the stipulations provided therein (subject to exceptions) is no longer dependent on genuineness of such payment.*
>
> *5.1c Accordingly, in view of the above including the extant position of law in this regard; the disallowance made u/s 40A (3) with regard to cash purchases of sugarcane (agricultural produce) by the appellant in the impugned order (Rs. 180,82,22,234/-) is deleted The ground at (b) above is allowed.*

10. In the light of specific exception provided under Rule 6DD(e) in respect of agricultural produce, since the assessee made purchases of sugarcane, which is essentially an agricultural produce, coupled with the fact that Revenue has earlier accepted this claim of the assessee, we therefore, do not see any infirmity into the impugned order. Same is hereby sustained. This ground of Revenue's appeal is dismissed.

11. Apropos ground no. 3 learned DR supported the assessment order.

12. We have heard learned DR and perused the material on record. We find that learned CIT(Appeals) has given a finding of fact that impugned loan amount was not taken during the year under consideration. For the sake of clarity, finding of the learned CIT(Appeals) is reproduced as under:

> *"5.2a It is gathered from the appellant's submissions at para 4 to 4.2 above that no loan has been taken during the relevant PY as revealed in its audited balance sheets as on 31/03/2013 and on 31/03/2014. Secondly, it is observed that the appellant had provided details regarding the unsecured loans standing in its balance sheet as on 31/03/2014 both at the appellate stage as well as at the assessment stage in this regard. In fact, the appellant filed a copy of its communication dated 16/12/2016 wherein it is mentioned inter alia, "...With respect to your requisition of detail of loans taken and given, in the requisite format, in this regard it is stated that the assessee company has not taken from farmers during the year under assessment, the same can be verified from Note 3 of the Balance sheet submitted before your Honour which shows the balance of loans and advances from others at Rs.40,99,90,801/- as on 31.03.2014 and it is same as on 31 03.2013. No loans from farmers has been obtained during the year under assessment. However, vide letter dated 29.11.2016, we have already submitted details of unsecured loans obtained by the assessee during the preceding assessment year which was inadvertently mentioned as loan obtained during the year under assessment. The details submitted on 29.11.2016 contains the closing*

balance of loan taken and loan given as on 31.03.2014 i.e. loan taken as on 31.03.2014 at Rs.40,99,90,801/- and loan given as orr31.03.2014 at Rs.65,57,64,069/-...

….At this stage it is also appropriate to understand the modus operandi of the assessee's business in the right perspective so that the assessment be made in accordance with the provisions of the law. As explained above, the business of the assessee is manufacturing of sugar and sale of the same in the market. The raw material for manufacturing process is. the sugar cane crop which is procured, from, the farmers who grow the same within the vicinity of the assessee 's factory. The farmers in general belong to lower rung of the society and normally do not have any bank account. The procurement therefore had to be in cash through Account Payee cheque It is also be understood that the farmers are to be supported in their endeavor to grow crop and in the process the Government has a number of relaxations and rules for them. Even the financial institutions are directed to offer loans / advances at lower/no rate of interest to promote cultivation and agricultural activities in India and for the welfare of the farmers, the loans by the financial institutions are thus basically in the interest of cultivation and other procurements for growing of the crops. However, since the financial institutions mainly banks are also subjected to various regulations and standard, therefore, in the interest of funds disbursed such institutions also want to secure the same It is also worthwhile to mention here that majority of such disbursement is also to be made in cash since the farmers have no bank accounts.

Thus, the process of disbursement be as such that it should guard the interest of all parties involved and at the same time it be ensured that agriculturists are promoted and motivated and the procurement of agriculturists produce is ensured and also the bank interest is also guarded and the security of the disbursed amount be ensured. Therefore, the process of disbursement of loan are routed through the assessee company to whom the farmers have dealings and also known to the assessee company. Since the assessee company is directly or indirectly is touch with the farmers, therefore, the interest of the bank is automatically guarded. It is a pre-condition precedent to the assessee's business that to carry on the business of manufacturing and sale of sugar and for the purpose of un-interrupted supply of agricultural produce it has to participate in the loans / advanced to farmers by the bankers or financial institute.

The disbursement so received by the assessee from the bank is duly credited to the bank account maintained with the scheduled bank which is used to disburse the loans in cash to the farmers as per the instructions of the banks / financial institutions. In order to ensure the safety of the advances so disbursed, the assessee deduct part of sale consideration payable to the farmers and account for

them as cash received from the farmers. Such accounts are categorized as advance to farmers and advance from farmers. The fact is evident from the bank statement of the assessee company and explanations furnished during the earlier hearing already on record.

Thus in the accounts maintained by the assessee, there will be automatically entries loans given to the farmers from the amounts received from the banks and loans received from the farmers which is essentially to secure the amount to be returned to the bank. Thus, the above transactions of loans do neither result in accrual of any income to the assessee nor can be categorized as advance given by the assessee or received by the assessee from the farmers thus, these transactions do not qualify the either disallowance or subjected to any penalty on account of cash involvement. It is suffice to say that giving of advance and taking of advance from the farmers is only an enabling process for the assessee to carry out its business and distinguish from loans or advance in commercial sense..."

5.2b It is observed from the copies of the relevant financial statements as well as communication from the bank in this regard that the appellant's contention by the above submission is borne out from records. It is observed from the Assessment Record obtained from the AO that this communication (at the assessment stage) appears therein. However, it can be inferred safely that neither the issue was captured in the right perspective in its commercial sense in the impugned order nor the provision of the extant law in this regard was followed, thereby resulting in the addition therein u/s 68 of the Act.

5.2c Further, Section 68 of the Income tax Act 1961 deals with cash credits and states inter alia, "Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer is not satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year

Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless –

(a) the person, being a resident in whose name such credit is recorded in the books of accounts of such company also offers an explanation about the nature and source of such sum so credited, and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided further that...."

Thus, it is clear that in case of the above provisions of the Act, only the amount credited to the account of the assessee in the relevant PY can be brought under the ambit of Section 68, In the present case this is not so. The amount of unsecured loan (long term) during the relevant PY was actually received in the earlier PYs and was disclosed in the relevant balance sheet as such. Hence, the appellant's contention that the amount of its unsecured loan during the relevant PY (AY 2014-15) will not come under the clutches of Section 68 of the Act, appears plausible,

5.2d Accordingly, in view of the commercial expediency - the appellant's taking a security deposit from the particular sugarcane growers from whom it purchases sugarcane, a raw material in the manufacture of sugar - the appellant's business and the fact that the audited financial statements, not rejected in the assessment, revealing the appellant's submission that the loans (deposits) in the names of such farmers aggregating to Rs.40,99,90,801/- were not freshly taken in the relevant PY, the addition made u/s 68 in the impugned order (Rs.40,99,90,801/-) is deleted. The ground at (c) is allowed.

13. The above finding of fact is not controverted by the Revenue by placing any contrary material on record. Therefore, we do not see any reason to interfere in the finding of learned CIT(Appeals). The learned CIT(Appeals) has categorically recorded that the amount of unsecured loan during the relevant financial year was received in the earlier financial year and was disclosed in the relevant balance-sheet as such. The ground raised by the Revenue thus lacks merit and is dismissed.

14. In the result, Revenue's appeal is dismissed.

Order pronounced in open court on 28th Nov. 2022.

Sd/-	**Sd/-**
(NARENDRA KUMAR BILLAIYA)	**(KUL BHARAT)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI