

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्यके समक्ष

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

आयकर अपील सं./ITA No.: **640/CHNY/2018**

निर्धारण वर्ष/Assessment Year: 2014-15

**Saranya Agro Foods Pvt. Ltd.,** vs. **The Income Tax Officer,**  
35, Second Cross, Kurunji Company Ward-2,  
Nagar, Lawspet, Puducherry.  
Puducherry – 605 008.

**PAN: AAQCS 3731D**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

&

आयकर अपील सं./ITA No.: **914/CHNY/2018**

निर्धारण वर्ष/Assessment Year: 2014-15

**The Income Tax Officer,** vs. **Saranya Agro Foods Pvt. Ltd.,**  
Company Ward-2, 35, Second Cross, Kurunji  
Puducherry. Nagar, Lawspet,  
Puducherry – 605 008.

**PAN: AAQCS 3731D**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by

: Shri R. Viswanathan, CA

राजस्व की ओर से /Revenue by

: Shri AR.V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 03.01.2023

घोषणा की तारीख/Date of Pronouncement

: 06.01.2023

**आदेश / O R D E R****PER MAHAVIR SINGH, VICE PRESIDENT:**

These cross appeals by the assessee and Revenue is arising out of the order of the Commissioner of Income Tax (Appeals)-Puducherry, vide ITA No.128/CIT(A)-PDY/2016-17 dated 27.12.2017. The assessment was framed by the Income-tax Officer, Ward-2, Pondicherry for the ay 2014-15 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 31.12.2016.

**ITA No.640/CHNY/2018**

2. The first issue in assessee's appeal is as regards to the order of CIT(A) confirming the disallowance of freight expenses to the extent of Rs.10,78,558/- made by the AO by invoking the provisions of section 40A(3) of the Act. For this assessee has raised the following Ground No.1:-

1. Freight expenses disallowance of Rs.10,78,558 u/s 40A(3)

The Commissioner of Income-tax (Appeals) failed to appreciate the ledger books, list of lorries for which the freight was paid and the individual vouchers signed by the drivers of the respective vehicles. He failed to appreciate that each payment is independent of the other payments and supported by separate vouchers from the driver who is the recipient. As each payment is less than Rs.20,000 it is not attracted by Section 40A(3), there can be no disallowance.

3. We have heard rival contentions and gone through facts and circumstances of the case. The assessee has claimed freight expenses to the tune of Rs.10,78,558/-. The AO during the course of scrutiny assessment proceedings required the assessee to produce evidences and in turn assessee produced list of lorry number, weight and amount and also stated vide letter dated 31.12.2016 freight charges have been paid to individual drivers individually, each lorries are having separate arrangement but could not produce any vouchers or bills for its claim. The AO on verification of ledger found that the assessee company has incurred in cash exceeding Rs.20,000/- per day totaling to Rs.10,87,558/-. Hence, he disallowed by invoking the provision of section 40A(3) of the Act. Aggrieved, assessee preferred appeal before CIT(A). Before CIT(A) also, assessee could not produce any evidence. Therefore, the CIT(A) confirmed the addition made by the AO. Aggrieved, assessee preferred appeal before Tribunal.

4. Before us, the Id.AR for the assessee filed application under Rule 29 of the Income Tax Appellate Tribunal Rules, 1963 by filing following details:-

- “a) Analysis of sheet showing break up for payment towards Freight charges
- b) Copy of cash voucher for freight charges

Admittedly, as admitted by Id.AR for the assessee that these vouchers and bills for payment towards freight charges were available with the assessee even at the time of assessment proceedings or even at the time of first appellate proceedings but could not produce, without any reason. Since, there is no reasonable cause for admitting the petition under Rule 29 of the Income Tax Tribunal Rules, we reject the application and since there is no evidence for the claim of freight expenses, we dismiss this ground of assessee's appeal.

5. The next ground in this appeal of assessee is as regards to the addition made by AO and confirmed by CIT(A) in regard to notional interest amounting to Rs.2,07,729/-. For this, assessee has raised following Ground No.2:-

2. Addition of Rs.2,07,729 as notional interest:

The learned Commissioner (Appeals) failed to appreciate that the loan of the Appellant from banks are for specific purpose of paying the imported oil bills and there has been no diversion of funds for any other purpose. Further interest receipts are more than the interest payments. Hence no part of the interest can be disallowed.

6. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the AO during the course of assessment proceedings added notional interest of Rs.53,314/- on account of Gojan Educational Trust, Rs.30,512/- of Shri G.

Natarajan, Rs.42,731/- of Smt. Brinda Natarajan and a sum of Rs.56,959/- of M/s. Zam Zam Impex. The AO computed the proportionate interest of interest free advances and disallowed interest amounting to Rs.1,54,62,584/- but the CIT(A) restricted the disallowance of interest on the above items amounting to Rs.2,07,729/-. The CIT(A) noted that the disallowance should be restricted at 0.88% of average outstanding in the case of M/s. Gojan Educational Trust, Shri G. Natarajan, M/s. Zam Zam Impex and M/s.Kalaskathi Agro Ltd. For this, the CIT(A) observed in para 5.17 as under:-

“5.17 The interest which can be disallowed is at 0.88% of Average Outstanding in the case of M/s Gojan Educational Trust (0.88% of Rs.9,03,605/-, i.e. Rs.7,952/-), G.Natarajan (0.88% of Rs.3,57,743/-, i.e. Rs.3,148/-) and Zam Zam Impex (0.88% of Rs.19,02,500, i.e Rs.16,742/-). In the case of M/s. Kalaskathi Agro Ltd., being a sister concern, though there are purely business transactions between them, 0.88% of Rs.408,83,368/-, i.e Rs.1,79,887/- should also be disallowed. Thus total disallowance of Rs.2,07,729/-. The AO is directed to restrict the disallowance under proportionate interest on interest free advances to Rs.2,07,729/-.

Aggrieved, assessee came in appeal before the Tribunal.

7. Now before us, the assessee could not controvert the finding of CIT(A) and as to how the proportionate disallowance on average outstanding computed by CIT(A) at 0.88% is unreasonable because there is not business transaction declared by assessee from these

parties and hence, the CIT(A) has rightly computed proportionate disallowance on average outstanding. Hence, we confirm the order of CIT(A) and dismiss this issue of assessee's appeal.

8. The next issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in disallowing travelling expenses of Rs.2,13,803/-. For this, assessee has raised following Ground No.3:-

“3. Travelling Expenses disallowance of Rs.2,18,803:

The CIT(Appeals) had not disputed the genuineness or the purpose of the travelling expenses. The travelling expenses have been incurred exclusively for the Appellant's business purposes, debited to the Profit and Loss Account and hence allowable as expenditure.

9. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the AO disallowed travelling expenses on verification of ledger account of Kalasakthi Agro Ltd., and assessee could not produce any evidence. Even before CIT(A), the assessee could not file any evidence and for this, the CIT(A) confirmed the action of AO by observing in para 5.18 as under:-

“5.18 Travelling expenses:

The AO had disallowed Rs.2,18,803/- under travelling expenses. Since no further evidence in support of claim has been given by the appellant, same is confirmed.”

10. Even now before us, the assessee could not produce anything in support of the claim and hence, this issue of assessee's appeal is dismissed. Therefore, the appeal of the assessee is dismissed.

**ITA No. 914/CHNY/2018**

11. At the outset, it is noticed that this appeal of Revenue is barred by limitation by 11 days. The order of the CIT(A) dated 27.12.2017 was received in the office of the Principal Commissioner of Income Tax on 04.01.2018 as per Form 36. The appeal was filed before the Tribunal on 16.03.2018 with a delay of 11 days. The Revenue has filed affidavit for condonation of delay stating the reason that due to shifting of office to new building, the miscellaneous records were misplaced and could not be traced immediately. Therefore the appeal papers could not be processed in time and it was beyond the control of AO. When this was confronted to Id.AR, he has not objected for condonation of delay. We find the cause as reasonable and hence, condone the delay and admit the appeal.

12. At the outset the Ld. AR for the assessee pointed out that the tax effect in this appeal is below Rs.50.00 lakhs. The learned AR for the assessee further submitted that in view of the CBDT Circular

No.17/2019, dated 08.08.2019 brought out by the Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, Government of India, the appeal was not maintainable and be dismissed. The Ld. DR also agreed to the facts stated by the Ld.AR for the assessee. In view of the CBDT Circular No. 17/2019 dated 08.08.2019 no appeal should be filed by the Revenue before the Tribunal which has tax effect of Rs. 50.00 lakhs or less and this circular is also applicable retrospectively to all pending appeals, the appeal filed by the Revenue is dismissed as not-maintainable.

13. In the result, the appeals filed by the assessee in ITA No.640/CHNY/2018 and by the Revenue in ITA No.914/CHNY/2018 are dismissed.

Order pronounced in the open court on 6<sup>th</sup> January, 2023 at Chennai.

Sd/-

(जी. मंजुनाथ)

**(G. MANJUNATHA)**

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

**(MAHAVIR SINGH)**

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 6<sup>th</sup> January, 2023

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|-------------------------|------------------------------|
| 1. निर्धारिती/Assessee | 2. राजस्व/Revenue       | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT    | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF.            |