

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA (SMC) BENCH: AGRA**

BEFORE SHRI A. D. JAIN, JUDICIAL MEMBER

**I.T.A No. 84/Agra/2017
(ASSESSMENT YEAR-2008-09)**

Sahu Corrugated Packagings, Etah Road Tundla, Distt. Firozabad U.P. PAN No.AADFS6398G (Assessee)	Vs.	ITO,-5(1), Firozabad. (Revenue)
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Assessee by	Shri Mohd. Jawed Akhtar, AR.
Revenue by	Shri Waseem Arshad, Sr.DR.

Date of Hearing	19.04.2018
Date of Pronouncement	10.05.2018

ORDER

This is assessee's appeal for assessment year 2008-09, taking the following grounds:

"1. Because, the learned Commissioner of Income Tax (Appeals)-2, Agra, erred in law as well as on facts while confirming the disallowance of Rs.72000/- u/s 40A(3) of the Income Tax Act, 1961.

2. Because, the following observations of the learned CIT (Appeals)-2 in the order are perverse, arbitrary, baseless and misleading:-

(i) Hence, the payment made to the above parties in cash over counter and no record is available with the bank for verification whether the cheques were crossed/account payee or not. Therefore, the addition made by the AO u/s 40A(3) of IT Act is proper. (Page no. 5, last para of point no. 3).

(ii) I find force and credence in the findings of the AO that the payments made by mode other than crossed account payee cheques in excess of Rs. 20000/- are hit by provisions of section 40A(3) of the Act. (Page no. 5, point no. 6).

(iii) During appeal proceedings the Ld. AR could not furnish any document/evidence to prove that the payments made in cash exceeding Rs 20,000/- are covered by any exceptions provided under Rule 6DD of the I.T. Rules. (Page no. 5, point no. 6).

3. Because, the observation of the learned CIT (Appeals)-2, on page 2, "Ground Nos. 1 & 2, "no argument have been advanced in support of these grounds" has erred in overlooking and in summarily rejecting the detailed statements, replies, written submissions, arguments and preliminary objections on reasons to belief regarding initiation of proceedings u/s 147 / 148 of the I.T. Act, 1961, which have been made before the learned assessing officer and these are on the records.

4. Because, the observation of the learned CIT (Appeals)-2, on page no. 5, point No. 5.2, has erred in overlooking and in

summarily rejecting the detailed statements of facts submitted along with memorandum of appeal, various regarding account payee/crossed cheques placed in paper book filed and these are on the records.

5. *Because, the observation on page no. 4, line no. 1 to 3 (at the top) of the appellate order that "During the FY 2007-08, the assessee firm had been made payments against purchase of goods from M/s Vaidangi Chemicals and issued following "bearer cheques", the details of which are as under: "*

<i>Cheque No.</i>	<i>Date</i>	<i>Amount</i>
<i>998116</i>	<i>15.09.2007</i>	<i>Rs.22000.00</i>
<i>998121</i>	<i>01.11.2007</i>	<i>Rs.25000.00</i>
<i>998134</i>	<i>31.12.2007</i>	<i>Rs.25000.00</i>
	<i>Total</i>	<i>Rs.72000.00</i>

Because, said observation of the learned lower authority, "that issued cheques are bearer" is baseless and misguided fact, whenever submission of the branch manager, State Bank of India, dated 10.02.2016 is "yes, the payment of these cheques had been made on cash over the counter" [on page no.4, point no. 2 (last 2 lines)].

6. *Because, the observation on page 4, point no. 1 (2nd last para) on the basis of submission of the Branch Manager, State*

Bank of India dated 10.02.2016, "Hence, the payment made to the above parties in cash over counter and no is available with the bank for verification whether the cheques were crossed /account payee or not", while accepting the lop-sided and factually incorrect version of the learned assessing officer.

(i) Because, no primary/secondary evidences are available on the records, that the issued cheques to M/s Vaidangi Chemicals are bearer cheques.

(ii) Because, as per the remand report dated 19.07.2016, the learned Assessing officer failed to take any primary or secondary evidences from the Branch Manager of the concerned bank, regarding the payments made to M/s Vaidangi Chemicals through bearer cheques.

(iii) Because, the learned assessing officer and the learned CIT (Appeals)-2, have disbelieved/overlooked on the secondary evidences and explanations of the assessee i.e. the photocopies of account payee/crossed cheques.

7. Because, the learned lower authority failed to dispose of the Preliminary objections regarding initiation of proceedings u/s 147 / 148 of the Income Tax Act, 1961 and, therefore, the assessment is liable to be annulled.

8. Because, the very initiation of proceeding u/s 147 and issuance of notice u/s 148 of the IT. Act, 1961 are bad in law,

invalid and based on change of opinion by the succeeding assessing officer and, therefore, the assessment is liable to be annulled.

9. *The learned lower authority u/s 147/143(3) of the IT. Act, 1961, 30.06.2014 passed an order on the basis of explanations given by the concerned bank branch manager and without taking any primary evidences. Disallowances of Rs.72000/- u/s 40A(3) of the Income Tax Act, 1961, is bad in as well on facts.*

10. *Because, the remaining observations are repetitive and general in nature and do not require any comment.*

11. *Because the Assessment order/Appellate order has been passed without adhering to the rules of natural justice.”*

2. The assessee had raised the following Ground Nos. 1 and 2 before the Id.

CIT(A):

“1. *Because the very initiation of proceedings u/s 147 and issuance of notice u/s 148 are bad in law, and based on change of opinion by the succeeding assessing officer and therefore, the assessment is liable to be annulled.*

2. *Because the initiation of proceedings u/s 147 / 148 and completion of assessment order u/s 147 are bad in law as well as on facts and are liable to be annulled.”*

3. The Id. CIT(A) dismissed the Ground Nos. 1 and 2 raised before him, observing as follows:

“3. Ground Nos. 1 & 2 the appellant vide these grounds of appeal has challenged the AO’s action initiating proceedings u/s 147 of the Act. However, during the course of appeal proceedings, no arguments have been advanced in support of these grounds. Therefore, these grounds of appeal are dismissed.”

4. The Id. Counsel for the assessee has drawn attention of this court to APB 7-9, which is a copy of written submissions dated 04.02.2016 filed by the assessee before the Id. CIT(A). These written submissions are as follows:

“During the hearing of the case u/s 143(3) for the AY 2008-09, a detailed discussion and detailed verification or checking the books of Accounts i.e. cash book, ledger, journal bills, vouchers, bank statements etc. had been completed and after duly compliances and submissions of the required information the order u/s 143(3) for the AY 2008-09 dated 10.03.2010 had been passed by the learned Assessing Officer.

3. The learned Assessing Officer (AO) has thus observed in 1st para of the Assessment Order u/s 147/143(3) of the IT Act, 1961.

“In this case income of the assessee was originally assessed u/s 143(3) at income of Rs.107410/- on 10.03.2010. Latter on, notice u/s 148 was issued to the assessee on 24.03.2014. The assessee, vide its reply filed on 06.05.2014, requested to treat the return for the A.Y. 2008-09 filed on 26.08.2008 to be treated as return of income in compliance to the said notice

u/s 148. Reasons of notice u/s 148 were supplied to the assessee as requested by it. Notice u/s 143(2) was issued to the assessee on 06.05.2014. In compliance to it, Sh. Jawed Akhtar, CA appeared and furnished reply / relevant papers which were test checked. The case was discussed with him from time to time.”

4. *During the FY 2007-08, the assessee-firm had been made payments against purchasing of goods to M/s Vaidangi Chemicals through Account payee/crossed cheques. The details of the cheques are as follows:*

<i>Date of cheque</i>	<i>Name of Suppliers</i>	<i>Cheque Nos.</i>	<i>Amount</i>
<i>15.09.2007</i>	<i>M/s Vaidangi Chemicals</i>	<i>998116</i>	<i>22,000/-</i>
<i>01.11.2007</i>	<i>M/s Vaidangi Chemicals</i>	<i>998121</i>	<i>25,000/-</i>
<i>31.12.2007</i>	<i>M/s Vaidangi Chemicals</i>	<i>998134</i>	<i>25,000/-</i>
		<i>Total</i>	<i>72,000/-</i>

5. *During the assessment proceeding u/s 147/148 of the Income Tax Act, 1961, the assessee-firm had explained all the transactions and furnished the photocopies of account payee/ crossed cheques which were issued to M/s Vaidangi Chemicals.*

6. *Various written submissions filed during the course of assessment proceedings have been summarily brushed aside.*

7. *The learned Assessing Officer has disbelieved the photocopies of account payee/crossed cheques and on the explanations given by the assessee firm. (photocopy enclosed marked as Annexure 1-5).*
8. *The learned Assessing Officer proposes to disallowed of Rs.72000/- (Rupees Seventy Two Thousands only) u/s 40A(3) of the Income Tax Act, 1961, the learned Assessing Officer have been relied only on the letter dated 02.01.2012 which was given by the Branch Manager of the concerned bank i.e. State Bank of India, ADB Branch-Tundla, Distt. Firozabad.*
9. *However, the learned AO has not taken the certified copies of the account payee / crossed cheques from the Branch Manager of the concerned bank, which are the main and important written documentary evidences for the case.*
10. *Paper Book is enclosed (Annexure 1-5) containing copy of the letter issued to the bank for seeking the certified copies of the cheques issued to M/s Vaidangi Chemicals and Photocopy of account payee /crossed cheques.*
5. These written submissions have been certified as filed before the Id. CIT(A). Accordingly, the matter is remitted to the Id. CIT(A), to be decided afresh in accordance with law, on considering the aforesaid written submissions filed by the assessee. The assessee shall be afforded due and adequate opportunity of hearing to support its case. The assessee, no doubt, shall co-operate in the fresh proceedings before the Id. CIT(A). All pleas available under the law shall remain so available to the assessee. Ordered accordingly.

6. All the other issues shall be decided afresh by the Id. CIT(A), in accordance with law, on affording due and adequate opportunity of hearing to the assessee, basing his decision on the decision to be arrived at on the issue concerning Ground No. 1.

7. In the result, for statistical purposes, the appeal is treated as allowed.

Order pronounced in the open court on 10/05/2018.

Sd/-

**(A.D. JAIN)
JUDICIAL MEMBER**

Dated 10/05/2018

AKV

Copy forwarded to:

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

ASSISTANT REGISTRAR