

**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA**  
[Before Shri Mahavir Singh, JM & Shri M. Balaganesh, AM]

**I.T.A No. 552/Kol/2013**  
**Assessment Year: 2007-08**

ITO Ward-41(2), Kolkata.	Vs.	Sh. Ashok Kumar Shaw, PAN-ALYPS0683A
(Appellant)		(Respondent)

Date of hearing: 01.12.2015

Date of pronouncement: 16.12.2015

For the Appellant: Shri Sh. Surjit Kumar Das, JCIT

For the Respondent: Shri Abhay Nath Keshari, FCA

**ORDER**

**Per Shri Mahavir Singh, JM:**

This appeal by revenue is arising out of order of CIT(A)-XII, Kolkata in Appeal No. 861/XII/41(2)/09-10 dated 29.11.2012. Assessment was framed by ITO, Ward-41(2), Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as “the Act”) for AY 2007-08 vide its order dated 24.12.2009.

2. At the outset, it is noticed that this appeal filed by revenue is time barred by 6 days, and revenue has filed condonation petition stating reasons that due to time barring assessments there was heavy pressure of scrutiny work and this was during last days, small delay of six days occurred. On query from the bench Ld. Counsel for the assessee fairly conceded that due to smallness of delay, the appeal can be admitted. Accordingly, we condone the delay and admit the appeal for adjudication on merits.

3. The first issue in this appeal of revenue, is against the order CIT(A), in deleting the addition made by AO by invoking the provisions of section 40A(3) of the Act, on cash payments exceeding prescribed limit.

4. Briefly stated facts are that the relevant assessment year involved is 2009-10 and assessee is proprietor of M/s A.K. Steel involved in trading of iron scrap. The AO noted from the books of account that the assessee had made payment in cash to one M/S M.K. Steel on 31.03.2007 and according to him this is in violation of section 40A(3) of the Act and as to why this should not be added to the returned income of the assessee. The assessee explained that a statement issued by payee clearly reveals that a long trail of payments throughout the year for an amount not exceeding 20,000/- on each of the

occasion for the entire payment is there but assessee due to inadvertence recorded all the payments as to have been made only on 31.03.2207. But, according to AO, this is an afterthought and he made addition by invoking the provisions of section 40A(3) of the Act. Aggrieved, assessee preferred appeal before CIT(A).

5. The CIT(A) deleted the addition by considering the submissions of the assessee and also case records, by observing as under:-

*“5.Appeal on ground no.2 and 3 are against the addition of Rs.16.76 lakhs by invoking sec. 40A(3) of the I.T. Act 1961 being payment made to M/S M.K. Steel. This issue has been discussed in detail by my predecessor in appeal order for A.Y. 2007-08 in appeal no. 722/CIT(A)-XII/41(2)/09-10 dt.15-12-2010. Hence, appeal on ground no. 2 & and 3 are allowed”*

Aggrieved, revenue came in second appeal before Tribunal.

6. We have heard rival contentions and gone through facts and circumstances of the case. We find that the CIT(A) had recorded factual finding after going through the books of account and copy of account of M/S M.K. Steel that all the payments were made on different dates during the relevant financial year and on each time the payment made in cash do not exceeded the prescribed limit as prescribed in the section 40A(3) of the Act. The payment in one go on any day never exceeded Rs.20,000/- as prescribed. This we can observe from the assessment order as under:-

*“It showed a long trail (wrongly mentioned as ‘train’) of payment almost throughout the year for an amount not exceeding Rs 20,000/- in cash on each day to defend the indefensible. Such a transaction does not appeal to the common sense. As the undersigned has relied on the entries made by the assessee, there is no question of making cross verification to others. In view of this, this amount of Rs.16.76 lakhs is to be added back.”*

We find that the AO never bothered to cross verify from others but he fully relied on the entry recorded by assessee in his books of account. But is strange that even though he was having the ledger account of M/S M.K. Steel, wherein no single payment was exceeding Rs. 20,000/- in a single day. Ld. Counsel for the assessee relied on the coordinate bench decision in the case of ITO V M/S A.K. Trading in ITA No.345/kol/2011 order dated 27.05.2011. In view of the above facts and circumstances of the case, we are of the view that CIT(A) has rightly deleted the addition and we confirm the same. This issue of revenue's appeal is dismissed.

7. The second issue in this appeal of revenue is against the order of CIT(A) deleting the addition made by AO of cash payment on assessee's behalf by one of the suppliers

M/S Jaiswal & Sons to CESC Ltd amounting to Rs.2.87 lacs by invoking the provisions of section 40A(3) of the Act.

8. We have heard rival contentions and gone through facts and circumstances of the case. We find from the facts of the case that the assessee made a payment of Rs.2.87 lacs by way of demand draft in favour of CESC Ltd at the request of creditor for purchase M/S Jaiswal & Sons. This fact is recorded in the assessment order as well in the appellate order of first appellate authority. We find that AO without believing the explanation of the assessee made addition but CIT(A) accepted the explanation. We find no infirmity in the order of CIT(A) and hence the same is confirmed. This issue of revenue's appeal is also dismissed.

9. In the result, the appeal of revenue is dismissed.

10. Order is pronounced in the open court on 16.12.2015

Sd/-  
(M. Balaganesh)  
Accountant Member

sd/-  
(Mahavir Singh)  
Judicial Member

Dated : 16th December, 2015

Jd. Sr. P.S

Copy of the order forwarded to:

1. Appellant – ITO Ward-41(2), Kolkata.
2. Respondent – Sh. Ashok Kumar Shaw, 147A, South Sinthee Road, Kolkata-700050.
3. The CIT(A), Kolkata
4. CIT Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.