

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री भागचन्द, लेखा सदस्य एवं श्री कुल भारत, न्यायिक सदस्य के समक्ष  
BEFORE: SHRI BHAGCHAND, AM AND SHRI KUL BHARAT, JM

आयकर अपील सं./ITA No. 613/JP/2015  
निर्धारण वर्ष / Assessment Year : 2009-10.

Smt. Aruna Rani, Prop. M/s. Agarwal Marble Impex, 2-Gha-9, Jawahar Nagar, Jaipur.	बनाम Vs.	The Income Tax Officer, Ward 6(1), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AAZPR 1621 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (C.A.)  
राजस्व की ओर से / Revenue by : Shri Mukesh Verma (CIT)

सुनवाई की तारीख / Date of Hearing : 10.02.2017.  
घोषणा की तारीख / Date of Pronouncement : 14 /02/2017.

आदेश / ORDER

PER SHRI KUL BHARAT, JM.

Since there was a difference of opinion between the learned Members, constituting a Division Bench of I.T.A.T., Jaipur, the Hon'ble President, I.T.A.T. nominated Shri Bhavnesh Saini, Judicial Member as Third Member. The Hon'ble Third Member vide order dated 02.02.2017 concurred with the findings of the Hon'ble Accountant Member and held as under :-

“ 5. Considering the above facts in the light of the above decision, it is clear that the nature of business of the assessee is such that assessee is required continuous supply of electricity for which assessee shall have to make payment to Jodhpur Vidyut Vitaran Nigam Ltd. for smooth functioning of the business activity of the assessee. In case no payment is made in cash to the above Nigam, then the electricity would have been discontinued. Therefore, having regard to the nature of business activity of the assessee and that assessee did not have banking facility where payment of electricity bill is to be made and considering the business expediency and other factors, I am of the view the case of the assessee would clearly fall in exception to Rule and no disallowance should be made under section 40A(3) of Income Tax Act. The learned Accountant Member has, therefore, rightly followed the decision of the coordinate Bench on identical issue in the case of Shri Rahul Pancholi (supra) in which on identical facts and issue, the departmental appeal was dismissed. Interestingly, the learned Judicial Member who has dismissed appeal of the assessee on the same set of facts, was the party to the order in the case of Shri Rahul Pancholi (supra). The learned Accountant Member was, therefore, right in his approach in allowing the appeal of the assessee by following the order of the coordinate Bench rather of the same Bench. The learned Judicial Member did not discuss in detail as to why he has not followed the order in the case of Shri Rahul Pancholi (supra) to which he himself is a signatory. The learned Judicial Member dismissed the appeal of the assessee on the sole reason that since the assessee has to make the payment of electricity bill regularly, it should have made such arrangement which is in accordance with the provisions of Section 40A(3) of the Income Tax Act. I may respectfully note that Tribunal is created by law and have to follow the law passed by legislator. If such view is considered, it would make proviso to section 40A(3) redundant. The Id. Counsel for the assessee, however, given an undertaking during the course of hearing that assessee, in future has made alternate arrangement to make payment for electricity bill as per provisions of law so that there is no violation of provisions of section 40A(3) of Income Tax Act.

6. Considering the totality of the facts and circumstances in the light of the above discussion, I agree with the view of the learned Accountant Member in allowing the appeal of the assessee holding that no disallowance should be made under section 40A(3) of the Act, in facts and circumstances of the case. I, therefore, agree with the view of learned Accountant Member. Let the file be placed before the regular Division Bench for passing a consequential order.”

2. Therefore, in accordance with majority view, the appeal of the assessee is allowed.

Order pronounced in the open court on 14 .02.2017.

Sd/-

( भागचन्द )  
( BHAGCHAND)

लेखा सदस्य / Accountant Member

Jaipur

Dated:- 14 /02/2017.

Das/

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Smt. Aruna Rani, Jaipur.
2. The Respondent – The ITO Ward 6(1), Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 613/JP/2015)

Sd/-

( कुल भारत )  
( KUL BHARAT )

न्यायिक सदस्य / Judicial Member

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar