

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'A' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Accountant Member
and Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A. No. 1422/KOL/ 2010
Assessment Year : 2006-2007**

M/s. New Panjabi Samrat,.....Appellant
M/s. D.J. Shah & Co.,
2, Elgin Road,
Kolkata-700 020
[PAN : AAEFN 2187 P]

-Vs.-

Income Tax Officer,.....Respondent
Ward-49(2), Kolkata,
169, A.J.C. Bose Road,
Kolkata-700 014

Appearances by:

Shri Miraj D. Shah, FCA, for the assessee
Shri Tanuj Niogi, JCIT, Sr. D.R., for the Department

Date of concluding the hearing : November 18, 2015
Date of pronouncing the order : November 20, 2015

O R D E R

Per Shri P.M. Jagtap:-

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-XXXII, Kolkata dated 18.02.2010 for the assessment year 2006-07 and the solitary issue arising out of the same relates to the addition of Rs.25,84,770/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) by way of disallowance of expenditure incurred in cash exceeding Rs.20,000/- by invoking the provisions of section 40A(3) of the Act.

2. The assessee in the present case is a partnership firm, which is engaged in the business of trading of Punjabi and Pyjama. The return of income for the year under consideration was filed by it on 31.10.2006

declaring total income of Rs.33,650/-. During the course of assessment proceedings, it was noticed by the Assessing Officer that the assessee has made purchases of Rs.1,29,23,851/- from Howrah Hut, for which no bills could be produced. In this regard, the explanation offered by the assessee before the Assessing Officer was that the list of purchases made from Howrah Hut was already furnished and since the said purchases were made from Howrah Hut, an unorganized market of villagers, there were no supporting bills/invoices issued by the sellers. The assessee, therefore, expressed its inability to file the copies of relevant bills for the verification of the Assessing Officer. From the perusal of the cash book of the assessee, it was also found by the Assessing Officer that all these purchases from Howrah Hut were made by the assessee in cash exceeding Rs.20,000/-. He, therefore, invoked the provisions of section 40A(3) and made a disallowance of Rs.25,84,770/- being 20% of the purchases made by the assessee in cash.

3. The disallowance made by the Assessing Officer under section 40A(3) of the Act was challenged by the assessee in an appeal filed before the Id. CIT(Appeals). During the course of appellate proceedings before the Id. CIT(Appeals), copies of bills for purchases made from Howrah Hut were produced by the assessee and a request was made for admission of the same as additional evidence on the ground that the same could not be produced before the Assessing Officer as the file containing the said bills was not traceable at the relevant time. The Id. CIT(Appeals) admitted the purchase bills filed by the assessee as additional evidence and forwarded the same to the Assessing Officer for his verification and comments. In the remand report submitted to the Id. CIT(Appeals), the Assessing Officer stated that in the absence of names and addresses reflected in the purchase bills, the same were not open for verification. Before the Id. CIT(Appeals), it was also submitted on behalf of the assessee that all the payments against purchases in cash were made in amounts less than Rs.20,000/- each to different persons and, therefore, the provisions of section 40A(3) were not applicable. The Id. CIT(Appeals) did not find

merit in this contention of the assessee as according to him, the payments of purchases as recorded in the books of account of the assessee were in excess of Rs.20,000/- on every day. He, therefore, proceeded to confirm the disallowance made by the Assessing Officer under section 40A(3). Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

4. At the outset, it is noted that there is a delay of one day on the part of the assessee in filing this appeal before the Tribunal. In this regard, the assessee has filed an application seeking condonation of the said delay and keeping in view the reasons given therein, we are satisfied that there was sufficient cause for the delay of one day on the part of the assessee in filing the present appeal before the Tribunal. We, therefore, condone the said delay and proceed to dispose of this appeal of the assessee on merit after considering the submissions made by both the sides and perusing the relevant material on record. The limited contention raised by the Id. Counsel for the assessee is that the purchase bills produced by the assessee before the Id. CIT(Appeals) were sufficient to show that none of the payments against purchases made from Howrah Hut was in excess of Rs.20,000/- in any instance. He has contended that the relevant entries made in the cash book of the assessee can corroborate this position but neither the Assessing Officer during the remand proceedings nor the Id. CIT(Appeals) during the course of appellate proceedings has given proper and sufficient opportunity to the assessee to support and substantiate its case. He has contended that this matter may, therefore, be restored to the file of the Assessing Officer in order to give such opportunity to the assessee to establish that the payments made in cash against the purchases made from Howrah Hut are not hit by the provisions of section 40A(3). The Id. D.R. has not raised any objection for giving such opportunity to the assessee. We, therefore, set aside the impugned order of the Id. CIT(Appeals) on this issue and restore the matter to the file of the Assessing Officer for deciding the same afresh after giving the assessee proper and sufficient opportunity to establish

its case that the impugned cash payments made against purchases from Howrah Hut are not hit by the provisions of section 40A(3) of the Act.

5. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open Court on November 20, 2015.

Sd/-

Sd/-

(S.S. Viswanethra Ravi)
Judicial Member

(P.M. Jagtap)
Accountant Member

Kolkata, the 20th day of November, 2015

Copies to : (1) ***M/s. New Panjabi Samrat,
M/s. D.J. Shah & Co.,
2, Elgin Road,
Kolkata-700 020***

(2) ***Income Tax Officer,
Ward-49(2), Kolkata,
169, A.J.C. Bose Road,
Kolkata-700 014***

(3) *Commissioner of Income-tax (Appeals)- XXXII, Kolkata*
(4) *Commissioner of Income Tax, Kolkata*
(5) *The Departmental Representative*
(6) *Guard File*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.