

**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA**

**BEFORE SHRI S.S. VISWANETHRA RAVI, JM & DR. A.L.SAINI, AM**

**आयकरअपीलसं./ITA No.318/Kol/2017**

**(निर्धारणवर्ष / Assessment Year: 2006-07**

<b>ITO, Ward-1(1), Asansol</b>	<b>Vs.</b>	<b>Abu Zobair&amp;KaziShafi Ahmad</b>
Lower Chelidanga, Asansol -4.		6, BudhaDanga Road, Asansol 713301.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AAKFA 6221 B		
<b>(APPELLANT)</b>	<b>..</b>	<b>(RESPONDENT)</b>

Appellantby : Shri Dulal Ch. Mandol,JCIT, DR  
Respondent by :Shri Arvind Agarwal, Advocate

सुनवाईकीतारीख/ **Date of Hearing** : **25/08/2017**

घोषणाकीतारीख/**Date of Pronouncement** : **17/11/2017**

**आदेश / ORDER**

**Per Dr. Arjun Lal Saini, AM:**

The captioned appeal filed by the Revenue pertaining to Assessment Year 2006-07, is directed against an order passed by the Id. Commissioner of Income Tax (Appeals), Asansol, in Appeal No.107/CIT(A)/ASL/Ward-1(1)/Asl/14-15, dated 05.12.2016, which in turn arises out of an order passed by the Assessing Officer u/s 147/143(3) of the Income Tax Act,1961( hereinafter referred to as the 'Act'), dated 27.03.2014.

2. The Revenue has raised the following grounds of appeal:

*"1.Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has justified by holding that cash payment to M/s. Asansol Bottling & Packaging Co. Ltd., Asansol, is not a violation of Section 40A(3) of the Income Tax Act, 1961.*

*2.Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has justified by holding that cash payment to a business organization, i.e. M/s Asansol Bottling & Packaging Co. Ltd., Asansol, is payment to Government for the purpose of section 40A(3) of the Income Tax Act, 1961.*

*3.Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has justified by holding that cash payment to M/s. Asansol Bottling & Packaging Co. Ltd., Asansol, is exempted as per Rule 6DD(b) with section 40A(3) when there are no rules to specify that this payment was required to be made in cash only.*

*4. That the appellant craves leave to add, alter, amend, modify, substitute, delete and/or rescind all or any of the ground of appeal on or before final hearing.”*

3. The brief facts qua the issue are that the assessee filed its return of income on 31.10.2006 disclosing total income at Rs.90,850/-. The assessee's case was duly processed u/s 143(1) at returned income of Rs.90,850/-. Later, it was detected that the assessee has made cash payments against purchases of country spirit to Asansol Bottling & Packaging Co. Pvt. Ltd. in violation of sec. 40A(3) of the Income Tax Act, 1961, resulting in escapement of income of Rs.38,82,867/-. Therefore, the Assessing Officer issued notice u/s 148 of the Income Tax Act, 1961. In response to the notice, the assessee, filed objection to the proceeding and requested for reason of opening the case. The assessee also requested to treat the return filed u/s 139 as return filed u/s 148. Consequent upon the compliance by the assessee, certified copy of reasons recorded for re-opening the assessment by invoking the provision of Section 147 of the Act was issued to the assessee on 22.05.2012.

The reason to reopen the assessment was that the assessee has made the purchases from Asansol Bottling & Packaging Co. Pvt. Ltd and had made the payments by depositing cash directly to the bank account of the supplier and therefore assessee did the violation of the provisions of section 40A(3) of the Income Tax Act, 1961. The AO observed that assessee firm had made purchases of country spirit amounting to Rs.1,93,98,138/- in cash from Asansol Bottling & Packaging Co. Pvt. Ltd. and each such instance exceeds Rs.20,000/-. The number of such instances of cash payment were 123 and same fact had been confirmed by the supplier company vide its letter dated 20.02.2014. During the course of the reassessment proceeding, the assessee submitted that as per decision pronounced by Hon`ble Income Tax Appellate Tribunal, Kolkata in the case of Ashok Mondal Vs.I.T.O. Ward 2(2), Asansol, in appeal No. 873/Kol/2012, wherein it was held that the payments made for purchase of country spirit are covered by rule 6DD(b) of I.T. Rules. Therefore, the assessee explained to AO that in view of the said decision no addition by invoking section 40A(3) can be made. However, the AO rejected the contention of the assessee for the following reasons:

(1). The payments have been made not to any bank, as claimed by the assessee, but to the bank account of the supplier company;

(2). The payments have been made not to any Government establishment, as claimed by the assessee, but to Asansol Bottling & Packaging Co. Private Limited;

(3). In the similar case of Smt. PushpaLataMondal, the Hon'ble I.T.A.T., Kolkata vide ITA No.965/kol/2010, Order dated 24.07.2010 has upheld the disallowance u/s 40A(3) for purchasing country spirit in cash from Asansol Bottling & Packagaing Co. Pvt. Ltd. Consequently, 20% of entire cash payments of Rs.1,93,98,138/- which comes to Rs.38,79,630/-, was disallowed by AO u/s 40A(3) of the Act and added back to the returned income of the assessee firm.

4 Aggrieved by the order of the Assessing Officer, the assessee filed an appeal before the CIT(A) who has deleted the addition made by assessing officer. The CIT(A) observed that the assessee is deriving income from sale of Country Spirit. During the previous year the assessee had made purchases from Asansol Bottling and packaging Company Pvt. Ltd. for an amount of Rs. 1,93,98,138/-. The assessee took the contention before the Assessing Officer that the cash payment has been made to the Government of West Bengal. However, the Assessing Officer did not accept the contention of the assessee and added 20% of the said amount under section 40A(3). The CIT(A) noted that the said facts of the assessee is squarely covered by the decision of the ITAT "A" Bench Kolkata in the case of BolkundaPachwai & (S) C.S. Shop in ITA No. 165 & 166/Kol/2014. In the said case the issue is exactly the same. i.e. cash payment exceeding Rs. 20,000/- made to Asansol Bottling and Packaging Company Pvt. Ltd. The Hon'ble ITAT in the said order has also considered the decision in the case of Smt.PushpalataMondal (supra-which had been relied by the AO), and has held in favour of the assessee. It was seen CIT(A) that the Hon'ble Tribunal had analyzed in detail notification No.1208-Ex dated 29.08.2005 issued by the Excise Department, Government of West Bengal and provisions of the West Bengal Excise Rules 2005 and the Bengal Excise Act, 1909. The Hon'ble Tribunal had also discussed the relationship of M/s Asansol Bottling and Packaging Company Pvt. Ltd. with the Government of West Bengal. Since M/s Asansol Bottling and packaging Company Pvt. Ltd. is a wholesale licensee it has been construed to be an agent of the State Government. Accordingly, the cash payment by the assessee has been made to the agent of the Govt. of W.B. Thereafter they have come to the conclusion that the above cash payment is an exception as provided in rule 6DD(k). The CIT(A), respectfully

following the above decision held that the addition made under section 40A(3) of Rs. 38,79,630/- is not tenable in this case as it falls under the exception of rule 6DD(k). Accordingly the CIT(A), directed the Assessing Officer to delete the said addition.

5. The Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

6. Ld Counsel for the assessee has submitted before us that there is jurisdictional Hon`ble Tribunal decision on the same identical facts in the case of Bolkunda Pachwai & (S) C.S. Shop in ITA No. 165 & 166/Kol/2014. In the said case the issue is exactly the same. i.e. cash payment exceeding Rs. 20,000/- made to Asansol Bottling and Packaging Company Pvt. Ltd. The assessee under consideration is deriving income from sale of Country Spirit. During the previous year the assessee had made purchases from Asansol Bottling and packaging Company Pvt. Ltd. for an amount of Rs.1,93,98,138/-. The assessee took the contention before the Assessing Officer that the cash payment has been made to the Government of West Bengal. However, the Assessing Officer did not accept the contention of the assessee and added 20% of the said amount under section 40A(3). Therefore, Ld Counsel pointed out that assessee`s case under consideration is squarely covered by the above mentioned judgment of the Hon`ble Tribunal and therefore, the addition should not be made.

7. Having heard the rival submissions and perused material available on record, we note that it is not in dispute that M/s Asansol Bottling & Packaging Co. Pvt. Ltd have been granted licence to act as a wholesaler for supply of country liquor to the retail vendor as per the regulations of the Excise Department, Government of West Bengal. The said regulation mandated the payments to be made directly into the bank account of the said wholesale licensee by the retail vendor (i.e. assessee herein) for strict and effective regulation of the country liquor and for prevention of spurious stocks and black marketing transactions from the same. Hence it could be safely concluded that the said wholesale licensee had acted at the instance of the State Government. Once this is so, then the said wholesale licensee could be

construed as an agent of the State Government. For the sake of convenience, the relevant rule is reproduced hereunder:-

*“Rule 6DD(k) - where the payment is made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person.”*

The payment made by the assessee retail vendor to the Principal, Government of West Bengal through its wholesale agent. The relationship between the assessee (authorized retailer) and Government of West Bengal (the supplier) acting under West Bengal Excise Rules through its Authorised Wholesaler Licensee (Agent), both de facto, is one of 'Principal' and 'Agent'. We hold that the assessee retail vendor had made payment to the said agent (wholesale licensee) would fall under the exception provided in Rule 6DD(k) of the Rules. Respectfully following the above decision of BolkundaPachwai& (S) C.S. Shop in ITA No. 165 & 166/Kol/2014 (supra), we are of the view that the addition made by AO under section 40A(3) of Rs.38,79,630/- is not justified, therefore we confirm the order passed by the CIT(A).

8. In the result, the appeal filed by the Revenue, is dismissed.

Order pronounced in the open court on this **17/11/2017**.

**Sd/-**  
**(S.S. VISWANETHRA RAVI)**

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata; दिनांक Dated **17/11/2017**  
RS,SPS

**Sd/-**  
**(DR. A.L.SAINI)**

लेखा सदस्य / ACCOUNTANT MEMBER

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant – ITO, Ward-1(1), Asansol
2. प्रत्यर्थी/ The Respondent-Abu Zobair&KaziShafi Ahmad
3. आयकरआयुक्त(अपील) / The CIT(A), :Kolkata.
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.  
सत्यापितप्रति

//True Copy//

By Order

Senior Private Secretary,  
Head of Office/D.D.O,  
I.T.A.T, Kolkata Benches, Kolkata.