

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

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

**I.T.A. No. 859/KOL/ 2016  
Assessment Year: 2010-2011**

**M/s. Shibpur Pachai Shop,.....Appellant  
Vill. & P.O. Shibpur,  
Dist. Burdwan-713 330  
[PAN: AAMFS 4463 P]**

**-Vs.-**

**Income Tax Officer,.....Respondent  
Ward-1(4), Asansol,  
Sahana Building, Chelidanga,  
Asansol-713 304**

**Appearances by:**

*Shri U. Dasgupta, Advocate, for the assessee  
Shri Arindam Bhattacharjee, Additional CIT, D.R., for the Department*

Date of concluding the hearing : December 13, 2017

Date of pronouncing the order : December 20, 2017

**O R D E R**

**Per Shri P.M. Jagtap, Accountant Member :**

This appeal filed by the assessee is directed against the order dated 22.02.2016 passed by the Id. Commissioner of Income Tax (Appeals), Asansol for the assessment year 2010-11 and the solitary issue involved therein relates to the disallowance of Rs.35,46,695/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) under section 40A(3) of the Income Tax Act, 1961.

2. The assessee in the present case is a partnership firm, which is engaged in the business of trading in Country Spirit and Pachwai. The return of income for the under consideration was filed by it on 21.09.2010 declaring total income of Rs.11,881/-. As noticed by the Assessing Officer during the course of assessment proceedings, the assessee had made purchases of Rs.35,46,695/- from M/s. Asansol Bottling & Packing Co. Pvt. Limited and payments against the same were

made by depositing cash directly in the Bank account of M/s. Asansol Bottling & Packing Co. Pvt. Limited in the sums exceeding Rs.20,000/-. According to the Assessing Officer, the said payments were made by the assessee in contravention of section 40A(3) of the Income Tax Act, 1961 and since the assessee could not explain any exceptional circumstances as specified under Rule 6DD of Income Tax Rules, 1962 for making such payments in cash, he made a disallowance of Rs.35,46,695/- under section 40A(3) of the Act.

3. The disallowance made by the Assessing Officer under section 40A(3) was challenged by the assessee in the appeal filed before the Id. CIT(Appeals) and since the submission made by the assessee in support of its case on the issue was not found acceptable by him, the Id. CIT(Appeals) 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. We have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that the issue involved in this appeal of the assessee relating to the disallowance under section 40A(3) is squarely covered in favour of the assessee by the various decisions of this Tribunal. In one of such cases, namely M/s. Amrai Pachwai & C.S. Shop decided by the Tribunal vide its order dated 15.01.2014 passed in ITA No. 1251/KOL/2011, payments were made by the assessee against purchases made from the same party, namely M/s. Asansol Bottling & Packing Co. Pvt. Limited by depositing the cash directly in the Bank account of the said supplier in the sums exceeding Rs.20,000/- and the disallowance made for the same under section 40A(3) was deleted by the Tribunal for the following reasons given in paragraphs no. 21 & 22 of its order:-

*"21. We find that M/s. Asansol Bottling & Packaging Co. Pvt. Ltd. is a bottling plant cum warehouse under Rule 2(vii) of the West Bengal Excise Rules, 2005 with privilege granted u/s 22 of The Bengal Excise Act, 1909. At this juncture, it*

would be relevant to go into the definition of warehouse as provided under the State Excise Rules, 2005, as below:-

"Warehouse", under Rule 2(vii) of the W.B. Excise Rules, 2005, means the warehouse for supply of country spirit to retail vendors, established at convenient places by the Commissioner at the expense of the State Government, or at the expense of a person to whom the exclusive privilege of supplying or selling country spirit by wholesale has been granted under section 22 of the Act, or of a licensed wholesale vendor of country spirit.

The above definition makes it clear that the 'warehouse' referred to under the State Excise Rules is under the direct control and authority of the Commissioner of State Excise because it is established by the Commissioner of State Excise and as such is a State Government establishment. It is also pertinent to note that the expenditure in relation to such warehouse is borne by the State Government or by the licensee to whom the exclusive privilege is granted u/s 22 of the Bengal Excise Act, 1909. Hence there could be no doubt that the warehouse is established by the State Excise Commissioner. Hence it could be safely concluded that the warehouse so established by the State Excise Commissioner is a State Government establishment. It would also be pertinent to note that the said warehouse has been specifically established for supply of country spirit to retail vendors (assessee herein) only and not to anybody else.

It would be pertinent to look into the definition of 'Wholesale licensee' as per Rule 2(viii) of the Excise Rules 2005 as below.-

Rule 2(viii) - "Wholesale licensee" means the wholesale vendor of country spirit to whom licence has been granted in West Bengal Excise Form No. 26.

It would be pertinent to look into Section 22 of The Bengal Excise Act. 1909 at this juncture as below:-

Section 22 - Grant of exclusive privilege of manufacture and sale of country liquor or intoxicating drugs -

(1) The State Government may grant to any person, on such conditions and for such period as it may think fit, the exclusive privilege -

- (a) of manufacturing, or supplying by wholesale, or
- (b) of manufacturing, and supplying by wholesale, or
- (c) of selling, by wholesale or retail. or
- (d) of manufacturing or supplying by wholesale and selling retail, or
- (e) of manufacturing and supplying by wholesale and selling retail,

*any country liquor or intoxicating drug within any specified local area:*

*Provided that public notice shall be given to the intention to grant any such exclusive privilege. and that any objections made by any person residing within the area affected shall be considered before an exclusive privilege is granted.*

*(2) No grantee of any privilege under sub-section (1) shall exercise the same unless or until he has received a license in that behalf from the Collector or the Excise Commissioner.*

*Hence it could be safely concluded that M/s. Asansol Bottling & Packaging Co. Pvt Ltd (Bottling Plant) is a warehouse within the meaning of Rule 2(vii) of the Excise Rules 2005 and said warehouse is a State Government establishment, established and controlled by the Excise Commissioner. It would be relevant to reproduce Rule 6DD(b) of the IT Rules at this juncture;-*

*(b) where the payment is made to the Government and, under the rules framed by it, such payment is required to be made in legal tender.*

*In the instant case, the assessee (retail vendor) had made cash payments for purchase of country spirit by depositing cash directly into the bank account of M/s ABPL as per Rule 6(2) of the Excise Rules 2005 , it has to be construed as payment made to the State Government authority and accordingly falls under the exception provided in Rule 6DD(b) of the IT Rules.*

*22. 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. At the cost of repetition, we would like to state that 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 defacto and dejure, 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”.*

5. As the issue involved in the present appeal as well as all the material facts relevant thereto are similar to the case of M/s. Amrai Pachwai & C.S. Shop (supra), we respectfully follow the decision rendered by the Coordinate Bench of this Tribunal in the said case and delete the disallowance made by the Assessing Officer and confirmed by the Id. CIT(Appeals) under section 40A(3) of the Act.

**6. In the result, the appeal of the assessee is allowed.**

Order pronounced in the open Court on December 20, 2017.

**Sd/-**  
**(S.S. Viswanethra Ravi)**  
**Judicial Member**  
**Kolkata, the 20<sup>th</sup> day of December, 2017**

**Sd/-**  
**(P.M. Jagtap)**  
**Accountant Member**

Copies to : (1) **M/s. Shibpur Pachai Shop,**  
**Vill. & P.O. Shibpur,**  
**Dist. Burdwan-713 330**

(2) **Income Tax Officer,**  
**Ward-1(4), Asansol,**  
**Sahana Building, Chelidanga,**  
**Asansol-713 304**

(3) **Commissioner of Income Tax(Appeals), Asansol;**  
(4) **Commissioner of Income Tax-** ,  
(5) **The Departmental Representative**  
(6) **Guard File**

*By order*

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