

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ "बी" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE MS. SUSHMA CHOWLA, JM AND
SHRI ANIL CHATURVEDI, AM

आयकर अपील सं / ITA No.508/PUN/2015

निर्धारण वर्ष / Assessment Year : 2011-12

Shri Shoukat Ahamed Makhubhai,
103, Parvej Apartment, Guhagar Naka,
Mapari Mohalla, Chiplun,
Ratnagari - 415 605.

..... अपीलार्थी /
Appellant

PAN : ABCPM6168Q.

बनाम v/s

Addl. Commissioner of Income-Tax,
Ratnagiri Range, Ratnagiri.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri M.S. Khire / S.V. Deshpande.

Revenue by : Shri Vivek Aggarwal.

सुनवाई की तारीख / Date of Hearing : 24.10.2017	घोषणा की तारीख / Date of Pronouncement: 18.01.2018
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by the assessee is emanating out of the order of Commissioner of Income Tax (A)-1 & 2, Kolhapur dt.20.02.2015 for the assessment year 2011-12.

2. The relevant facts as culled out from the material on record are as under :-

2.1 Assessee is an individual stated to be engaged in the business as contractor carrying out industrial project works and maintenance of civil contracts. Assessee electronically filed his return of income for A.Y. 2011-12 on 29.09.2011 declaring total income at Rs.14,12,980/-.

The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dt.17.01.2014 and the total income was determined at Rs.57,67,420/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.20.02.2015 (in appeal No.RTN/541/13-14) granted partial relief to the assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal before us and has raised the following grounds :

“1. In the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.5,82,703/- without properly appreciating the explanation filed and the reasonable explained therein.

2. In the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.89,000/- without properly appreciating the explanation filed.

3. In the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.3,50,000/- without properly appreciating the explanation filed and by ignoring the fact that assessee had identified the donor and had further agreed to produce him before the CIT for further verification of his credit worthiness when called for.

4. In the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.95,550/- when in fact Xerox copies of the Muster Book in question were filed at page No.18 and 19 of the Paper Book filed.

5. In the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.16,36,566/- without properly appreciating the explanation filed while confirming the addition the Ld.CIT(A) erred in ignoring the fact that payments were to sub-contractors and that no single transaction of default was ever pointed out by the AO as is envisaged in Section 40A(3).”

3. Before us, Ld.A.R. submitted that he does not wish to press ground Nos. 2 to 4. Therefore, these grounds are dismissed as not pressed. He submitted that ground Nos.1 and 5 are inter-connected. In view of the aforesaid submission of Ld.A.R. both the grounds are considered together.

4. During the course of assessment proceedings, AO noticed that assessee had made cash purchases from various parties and the details of which are listed at pages 7 to 9 of the assessment order. The assessee was asked to explain why the payments exceeding Rs.20,000/- were made in cash and why the payments should not be disallowed u/s 40A(3) of the Act. The submissions of the assessee were not found acceptable to the AO. AO noted that the total purchases made in cash payment which exceeds Rs.20,000/- aggregated to Rs.5,82,703/-. He accordingly by invoking the provisions of Sec.40A(3) of the Act disallowed the payments aggregating to Rs.5,82,703/-.

5. AO also noticed that assessee had made payment towards labour charges to various parties in cash and the aggregate of such payment was Rs.16,36,566/-. He also noted that assessee had splitted the amount to below Rs.20,000/- and such payments were made on each day. He also noted that most of the payments of labour charges were through self made vouchers and hence, not fully verifiable. AO after verifying the details furnished by the assessee noticed that the cash payments to the extent of Rs.16,36,566/- were paid to Shri K.A. Makubhai in cash. He concluded that these payments were made by splitting the payments to less than Rs.20,000/- to get rid of the legal provision of Sec.40A(3) of the Act. He accordingly disallowed the payments aggregating to Rs.16,36,566/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A). With respect to the impugned addition of Rs.5,82,703/- (raised in ground No.1 before us), Ld.CIT(A) upheld the addition made by AO by observing as under :

*“6. From the above facts it is undenied that payment of amounts exceeding the limit of Rs. 20,000/- was made in several instances. In order to by-pass the provisions of section 40A(3) bill amount was split into several parts to make payments below Rs. 20,000/-. Appellant did not have any explanation before the assessing officer in spite of several opportunities. The appellant now wants exemption to pay in cash any amount without any limit due to the reason of practical difficulty and business expediency. He wants that since dealers insist that payment should be made in cash, therefore, he should be allowed to make payment in cash. Such reason for business expediency and practical difficulty cannot be entertained. Section 40A(3) has been brought on statute to plug exactly these kinds of leakages in tax compliance. Cash receipt by a person is always likely to remain outside the taxation. If similar cash payments are allowed on the ground of business expediency, the provisions of section 40A(3) would be redundant and cash payment would become the norm. Appellant's explanation is devoid of any merit and, therefore, the ground taken by the appellant is rejected. The **addition is sustained.**”*

6. With respect to the impugned addition of Rs.16,36,566/- (raised in ground No.5 before us) Ld.CIT(A) upheld the order of AO by observing as under :

“19. Ground no. 6 relates to addition of Rs. 16,36,566/- under section 40A(3). The assessing officer has noted that payment of Rs. 16,36,566/- was made to assessee's relative, Shri K A Makubhai as labour charges who worked as sub-contractor. The amounts have been paid in cash by splitting the payments in amounts below Rs. 20,000/-. Payments were mostly made in debit vouchers which were not fully verifiable as far as their business nexus was concerned. The assessing officer has also observed that net profit ratio of assessee's business has been declining for the last three years. The above payment of cash to Shri K A Makubhai was made in addition to cheque payment of Rs. 1,53,000/-. Nothing prevented the appellant from making all payments in cheque, particularly when the payee was covered under section 40A(2)(b). In view of this, the amount was disallowed by the assessing officer under section 40A(3).

20. In appeal the assessee has argued that assessing officer has not pointed out any violation of section 40A(3). When the learned assessing officer has categorically accepted that the payments are made to sub-contractor then there is no question of complying with the provisions of section 40A(3). When the payments are undisputedly made to sub-

contractor then these are and can always be in the form of advance. Payment of advance by self-made voucher cannot be reason to disallow the impugned payments.

*21. From the above facts it is not denied that the amounts have been split in the sums below Rs. 20,000/-. Also, it is not denied that payments have been made to family member working as sub-contractor. Just because he is working as sub-contractor, he is not exempted operation of section 40A(3). Most of the labour payments are supported by self-made voucher which are not amenable to verification. Therefore, the addition made by the assessing officer is sustained and **ground taken by the appellant is rejected.**"*

Aggrieved by the order of Ld.CIT(A), assessee is now in appeal before us.

7. Before us, Ld.A.R. reiterated the submissions made before AO and Ld.CIT(A) and further submitted that the parties to whom the payments have been made below Rs.20,000/- had insisted for making the payment in cash and therefore the assessee was forced to make payment in cash and in support of his contention that the payments were demanded in cash, he pointed out to the copies of Certificates of three parties placed at pages 13 to 17 of the Paper Book. He further submitted that the payments were made to benefit their business expediency and it is not the case of revenue that the payments are not genuine or the payees are not identifiable. He also placed reliance on the decision of the Pune ITAT in the case of Dhanashri Ispat (ITA No.794/PUN/2013 order dt.31.05.2017). He also placed on record the copy of the aforesaid decision. Ld.D.R. on the other hand, supported the order of lower authorities.

8. We have heard the rival submissions and perused the material on record. The issue in the present grounds is with respect to disallowance u/s 40A(3) for the payments being in cash. In the

present case the payment made by cash by the assessee is not in disputed. It is one of the contention of the assessee that the parties to whom the assessee had made the payments in cash, had insisted for cash payments and in support of his contention, assessee had filed on sample basis the certificates from the parties to whom the payment has been made. The aforesaid certificates filed by the assessee have not been found to be untrue / bogus or afterthought. It is also not the case of the Revenue that the parties to whom the payments have been made are non-existent / bogus or the genuineness of the payment is in doubt. We find that Hon'ble Apex Court in the case of Attar Singh Gurmukh Singh Vs. ITO 191 ITR 667 (SC) has held that the terms of Sec.40A(3) of the Act are not absolute and that considerations of business expediency and other relevant factors are not excluded. It has further held that genuine and bonafide transactions are not taken out of the sweep of the section and it is open to assessee to furnish to the satisfaction of the AO the circumstances under which the payments in the manner prescribed in Sec.40A(3) of the Act was not practicable or would have caused genuine difficulty to payee. It further observed that provisions of Sec.40A(3) of the Act and Rule 66DD are intended to regulate business transactions and to prevent the use of unaccounted money or reduce the chances to use black money for business transactions. We further find that Hon'ble Gujarat High Court in the case of Anupam Teleservices (2014) 366 ITR 122 (Guj) after relying on the aforesaid decision of Apex Court in the case of Attar Singh (supra) held that when transactions are genuine and there was reasonable explanation for payment in cash, no disallowance u/s 40A(3) of the Act was warranted. In the present case, we are of the

view that the ratio of aforesaid decision of Hon'ble Apex Court and Hon'ble Gujarat High Court are applicable to the present facts. We therefore hold that disallowance u/s 40A(3) of the Act was not warranted in the present case. **We therefore allow the grounds of assessee.**

9. **In the result, the appeal of the assessee is partly allowed.**

Order pronounced on 18th day of January, 2018.

Sd/-	Sd/-
(SUSHMA CHOWLA)	(ANIL CHATURVEDI)
न्यायिक सदस्य / JUDICIAL MEMBER	लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 18th January, 2018.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-1 & 2, Kolhapur.
4. CIT-I/II, Kolhapur, CIT(Central), Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" / DR, ITAT, "B" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.