

IN THE INCOME TAX APPELLATE TRIBUNAL PATNA BENCH,  
PATNA

BEFORE SHRI N.K. SAINI (AM) and

SHRI AMIT SHUKLA (JM)

ITA No.129/Pat/2013

Assessment year: 2009-10

Janardan Prasad, Prop. M/s J.P. Enterprises, House No.6 Ramkrishna Colony, Kali Mandir Road, Hanuman Nagar, Patna.	Vs.	DCIT, Circle-4, Patna.
PAN/GIR No. AAUPP9710E		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Department by : Shri Kausik Kr. Das, Sr. DR  
Assessee by : Shri K. N. Prasad and  
Shri Shikesh Jha, Adv.

Date of hearing: - 06/03/2018  
Date of Pronouncement: - 08/03/2018

**ORDER**

**PER AMIT SHUKLA, JM:**

The aforesaid appeal has been filed by the assessee against order dated 22.02.2013, passed by CIT (Appeals)-Dhanbad, camp office-Patna for the quantum of assessment passed u/s 143(3) of the Income Tax Act, for the assessment year-2009-10.

2. In grounds of appeal, the assessee has raised following grounds:-

“1. For that the Grounds of Appeal hereto are without prejudice to one another.

2. For that the principal of natural justice as envisaged in the statute was not complied with by the Ld. CIT (A).

3. For that Ld. CIT(A) is erred in disallowing u/s 40A(3) of the Income Tax Act, 1961 being payment made to various parties through bearer cheques in spite of such payment was covered under rule 6DD(g).

4. For that the Ld. CIT (A) has failed to appreciate the banking transaction system and made sweeping addition u/s 40A (3) of the Act, 1961 by disallowing as sum of Rs. 52,61,916/-.

5. For that bonafide and legitimate submissions made in the course of assessment proceeding has arbitrarily been brushed aside and has not been considered in proper perspective.

6. For that in any view of the matter the addition of Rs.52,61,916/- as confirmed by the CIT(A) u/s40A(3) is arbitrary, unjustified, void-ab-initio and bad in law. The addition as made is fit to be deleted modified.

7. For that the addition of Rs.10,85,750/- on account of outstanding labour payment shown in the liability side of the balance sheet treated as bogus is unjustified and arbitrary.

8. For that the addition of Rs.2,95,000/- u/s 40(a) (ia) of the I. T. Act is unjustified and arbitrary.

9. For that the demand made on account of interest u/s 234B is unsustainable in law being mechanical and without the sanction of law.

10. For that the appellant carves leave to urge, add or alter any other ground of grounds at the time of hearing.”

3. At the outset, the Ld. Counsel had not pressed ground no.7 as it has been stated that it has wrongly been taken by the assessee.

The main issue arising out of the aforesaid grounds of appeal are, *firstly*, the addition of Rs.52,61,916/- made u/s 40A(3); and *secondly*, addition of Rs.2,95,000/- u/s 40 (a) (ia).

4. The brief facts *qua* the issues raised are that the assessee is a civil contractor and during the course of assessment proceedings, the AO from the perusal of the bank statement of Syndicate Bank noted that the assessee has made payments to various parties through bearer cheques. The details of these payments have been elaborated at pages 2 to 5 of the assessment order. The Ld. AO held that since these payments have been made in excess of Rs.20,000/- without account payee cheques, therefore, such an expenditure aggregating to Rs.79,00,000/- has to be added u/s 40A(3), and also these payments are not covered in the exceptions mentioned in Rule 6DD. On the issue of disallowance of expenses after invoking the provisions of section 40(a)(ia), the Ld. AO noted that assessee has made payment to various persons for designing and mapping on which TDS has not been deducted. Accordingly, he added payments aggregating to Rs.2,95,000/- u/s 40(a)(ia).

5. The Ld. CIT (A) too has confirmed both the additions made by the AO.

6. Before us the Ld. Counsel for the assessee, Shri K. N. Prasad, on the issue of disallowance of section 40A(3) submitted that here in this case, all the payments were made through bearer cheques and all these payments have been credited to the bank accounts of the respective persons. In other words, the payment made by the assessee has been shown as debit in the bank account of the assessee and corresponding credit in the bank accounts of the various persons, therefore, payment has been made through banking channels only. He submitted that bearer cheques in such a situation cannot be held to be equivalent to cash, because the purpose of section 40A(3) is to disallow cash expenditure. He further submitted that RBI has issued a guide line for remittance of funds for the value of Rs. 50,000/- or more in the following manner:-

*“Banks should ensure that any remittance of funds by way of demand drafts/ mail/telegraphic transfer or any other mode and issue of travellers’ cheques for value of Rs.50,000/- and above is effected by debit to the customer’s account or against cheques and not against cash payment.”*

Similarly in 'module 3 of Banking Law and Practice', it has been contemplated that remittance of Rs.50,000/- and above should be by debit to customer's account or against cheques only. Here, in this case the payment against purchase for sum of Rs.50,000/- and above is Rs.73,17,300/- and only an amount of Rs.5,82,750/- is less than Rs.50,000/-. Thus, the amount of Rs.73,17,300/- should out rightly deleted. The Ld. CIT (A) has granted relief for Rs.26,38,589/- on pro-rata basis in the following manner:-

	Original disallowance	Relief given by CIT(A) on prorata basis	After relief given by CIT(A) on prorata basis
Payment against purchase less than Rs.50,000/-	5,82,750/-	1,94,636/-	3,88,114/-
Payment against Purchase Rs.50,000/- & above	73,17,300/-	24,43,948/-	48,73,352/-
	79,00,050/-	26,38,584/-	5,261,466/-

7. Thus, he submitted that the entire addition sustained by the Ld. CIT (A) should be deleted as there is no violation of the section 40A(3) as such.

8. Regarding addition of Rs.2,95,000/- made u/s 40(a)(ia), he submitted that out of the said amount, sum of Rs.1,00,000/- has been paid to M/s Mangalam Planner for Design and Map and the remaining amount has been paid to various persons for mapping, design of water tower, etc. Regarding payment made to M/s Mangalam Planner, he submitted that the said person is assessed to tax and therefore, in view of the judgment of Hon'ble Supreme Court in the case of **Hindustan Coca Beverages Pvt. Ltd. vs CIT (2007) 293 ITR 226**, the said amount now can be taxed twice by way disallowance in the hands of the assessee. For the balance of remaining amount, he submitted that payment has been made to different persons for less than Rs.30,000/- and, therefore, no TDS was liable to be deducted u/s194J. Thus, such payment also cannot be disallowed.

9. On the other hand, Ld. DR submitted that, *firstly*, there is no exception provided u/s 40A (3) for the payments made by way of bearer cheques; and *secondly*, the details of purchase made by various parties for sums more than Rs.50,000/- has not been verified as to whether in their respective bank accounts, amount

has been credited or not. This needs to be examined. Therefore, the matter should be restored back to the file of the AO for verifying the contention of the assessee. As regard the issue of disallowance u/s 40(a)(ia) also, he submitted that this matter too should be restored back to the file of the AO to examine the contention now raised by the Ld. Counsel; and assessee will substantiate as to whether the payment made to M/s Mangalam Planner has been shown as their income in the return of income; and secondly, whether the payments made to various of the professional or designing and mapping is less than Rs. 30,000/- or not.

10. We have heard the rival submissions and also perused relevant findings given in the impugned order. From the nature and mode of payments made by the assessee as appearing in the assessment order, it is seen that same are with regard to purchase of materials from various parties for which assessee has made this payment to various persons through cheques debited from his bank account, *albeit* such cheques are bearer cheques. Though, section 40A(3) mentions that, if any person incurs any expenditure in respect of which a payment made to a person in a day, otherwise

than by an account payee cheque drawn on bank or account payee bank draft, exceeds twenty thousand rupees, no deduction shall be allowed in respect of such expenditure. The intention of the legislature by enacting such a provision was to discourage cash payments. Here in this case the payments have been made through bearer cheques, which has been debited to the assessee's account and it has been strongly contended by the Ld. Counsel that all these amounts have been credited directly to the bank account of the respective parties and, therefore, in a way it has to be reckoned as account payee cheque only. We find that, RBI had issued a guideline that for remittance of funds for value of Rs.50,000/- and above by way of demand drafts or any other mode is affected to the debit of the customer account or given cheques and not against cash payments. That is, any amount of Rs. 50,000/- and above if paid through banking channel, then it cannot be by way cash but has to be by account payee cheques. Similarly, Module-3 of 'Banking Law and Practice' provides that remittance of Rs.50,000/- and above should be by debit to customer account or through cheques only. These guidelines clearly provide that now under the banking norms, if the amount has been remitted through banking

channel for sum of Rs.50,000/- and above, then same should be treated at par with account payee cheques. Even though the cheques have been issued as a bearer cheque, it will not make a difference at all, because now as per the banking norms and practice such a cheque has to be cleared and remitted directly in the bank account of the other party. Thus, we agree with the contention of Ld. Counsel that, if the amount of Rs.50,000/- and above has been paid through banking channel and same has been credited to the bank accounts of other parties, then there is no violation of section 40A(3). Since, crediting of the amounts in the bank account of the parties are not available, therefore, we remit the matter back to the file of the AO who shall examine the fact as to whether the amount paid by the assessee through bearer cheques from his bank account has been credited to the bank accounts of the other parties or not. The onus to prove would be on the assessee to substantiate such a transaction either by producing the bank certificate form his bank or copy of the bank account statement of the of the respective parties. With this direction the issue of disallowance of section 40A (3) is treated as partly allowed for statistical purposes.

11. Regarding disallowance u/s 40(a)(ia), we hold that if the payment to M/s Mangalam Planner has been made, who has shown this as a part of its income and filed return of income, then no disallowance u/s 40(a)(ia) should be made. This proposition is in line with *proviso* to section 40(a)(ia) read with *2<sup>nd</sup> proviso* of section 201(1). Accordingly, we direct the AO to examine whether the amount of Rs.1,00,000/- paid to M/s Mangalam Planner has been shown in their return of income or not; and if assessee's contention is found to be correct then no disallowance should be made. Here also the onus would be upon the assessee only to substantiate this claim. On the issue of other payments made to various persons, we direct the AO to verify, whether the payments made to individual person have exceeded sum of Rs.35,000/- or not, because it is not in dispute that the payments made to these persons fall in the category of 194J and aggregate prescribed limit for payment is Rs. 30,000/-. If payment to an individual person has not exceeded sum of Rs. 30,000/-, then ostensibly no disallowance should be made. Accordingly, with these directions this ground is also treated as partly allowed for statistical purposes.

12. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order is pronounced in the open court on 08<sup>th</sup> March, 2018.

Sd/-

**(N.K. Saini)**  
**Accountant Member**

Sd/-

**(Amit Shukla)**  
**Judicial Member**

Date of order: 08<sup>th</sup> March, 2018.

S.Sinha

Copy of the Order forwarded to:

1. The Appellant.
2. The Respondent:
3. The CIT(A)-Patna
4. CIT , Patna
5. Income Tax Appellate Tribunal,Patna
6. Guard file.

BY ORDER

PRIVATE SECRETARY