

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

श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष  
BEFORE SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA No.1477/PUN/2016  
निर्धारण वर्ष / Assessment Year : 2010-11

Shri Uttamsingh R. Pawar,  
At Post, Vadoda,  
Muktai Nagar,  
Jalgaon – 425 306  
PAN :AKOPP1510G

.... अपीलार्थी/Appellant

Vs.

ITO, Ward-2(4),  
Jalgaon

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Nikhil Pathak  
प्रत्यर्थी की ओर से / Respondent by : Shri Ajay Modi, JCIT

सुनवाई की तारीख / <b>Date of Hearing : 13.03.2018</b>	घोषणा की तारीख / <b>Date of Pronouncement: 23.03.2018</b>
--	--

**आदेश / ORDER**

**PER D. KARUNAKARA RAO, AM :**

This is the appeal filed by the assessee against the order of CIT(A)-2, Nashik, dated 27-04-2016 for the Assessment Year 2010-11.

2. Grounds raised by the assessee are as under :

*"On facts and in law,*

- 1. The Ld.CIT(A) erred in confirming the disallowance made u/s.40A(3) of Rs.13,66,642/- out of the total disallowance of Rs.17,21,642/- without appreciating that no such disallowance was warranted on the facts of the case.*
- 2. The Ld.CIT(A) failed to appreciate that the cash payments made by the assessee to M/s. J.K. Wines was covered under the exceptions provided in Rule 6DD and hence, there was no question of making any disallowance in respect of the cash payments made by the assessee to the said party and the disallowance made should be deleted.*
- 3. The Ld.CIT(A) further erred in not appreciating that the payments made by the assessee to M/s. J.K. Wines were genuine and duly recorded in the books of accounts of the assessee and considering the*

*relevant facts of the case, no disallowance u/s.40A(3) was required to be made in respect of the cash payments made by the assessee.*

*4. The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”*

3. Briefly stated relevant facts of the case include that the assessee is individual and is a retail trader of liquor for human consumption. Assessee filed the return of income on 26-09-2010 declaring total income of Rs.4,90,080/-. There was scrutiny of accounts and that led to the discovery of cash payments in violation of provisions of section 40A(3) of the Act amounting to Rs.17,21,642/-. Assessee relied on the exemptions provided in Rule 6DD(g) of the I.T. Rules, 1961. Assessee also submitted that there are no banking facilities in the village Vadoda, Muktai Nagar, Taluk, Jalgaon District. Therefore, assessee made the payments in cash. Otherwise, assessee has a bank account elsewhere and the payments to others was made through banking facilities. Assessee also raised an argument that so long as such payments are genuine and not doubted by the Revenue, addition on account of section 40A(3) of the Act cannot be resorted to. Rejecting the arguments made by the assessee, AO proceeded to make addition of Rs.17,21,642/- invoking the provisions of section 40A(3) of the Act and the assessee income is determined at Rs.22,32,345/-.

4. During the First Appellate proceedings similar arguments were raised before him. CIT(A) rebutted all these arguments relating to non-applicability of provisions of section 40A(3) of the Act when payments are otherwise genuine, applicability of the exemptions provided in Rule 6DD(g) of the I.T. Rules, 1962 etc and granted part relief to the assessee. Relief granted is in respect of the cash payments made by the assessee on the Closed holidays, such as Sundays, Gandhi Jayanti,

Republic Day etc. Eventually, the addition to the extent of Rs.13,66,643/- is confirmed.

5. Aggrieved with the same, the assessee is in appeal before the Tribunal with the grounds mentioned above.

6. Before us, regarding the genuineness of the cash payments, Ld. Counsel for the assessee relied on the decision of Punjab & Haryana High Court in the case of Gurdas Garg Vs. CIT 63 taxmann.com 289 (Punjab & Haryana) and submitted that they are relevant for the proposition that where genuineness of transaction made in cash in excess of Rs.20,000/- was not disbelieved by the authorities, the same cannot be disallowed u/s.40A(3) of the Act. Regarding the applicability of the exemptions provided in Rule 6DD(g) of the I.T. Rules, 1962, Ld. Counsel for the assessee read out the relevant provisions of Rules and argued that there are no banking facilities in the village Vadoda, and therefore, the provisions of section 40A(3) cannot be invoked.

7. Per Contra, Ld. DR for the Revenue relied on the orders of the AO and the CIT(A). He drew my attention to the following decisions and submitted that the genuineness of the transaction is not a determining factor in matters relating to invoking of provisions of section 40A(3) of the Act :

1. *Associated Engineering Enterprise Vs. CIT 81 Taxman 91 (Gau)*
2. *Smt. Jyothi Challaram Vs. CIT 39 Taxmann 001 (AP)*
3. *T.G. Mutha Vs. ITO 54 ITD 460 (Pune)*

8. I heard both the parties and perused the orders of the Revenue and the decisions relied on by the parties. To start with, exemptions provided in Rule 6DD(g) of the I.T. Rules, 1962 are extracted here as under :

*“(g) where the payment is made in a village or town, which on the date of such payment is not served by any bank, to any person who ordinarily resides, or is carrying on any business, profession or vocation, in any such village or town”*

The above rule indicates that the payer of the cash needs to be either be resident of the village or should be carrying on the business in the said village, where no banking facilities are available on that date. In the instant case, the payer is M/s. G.K. Wines who is neither a resident nor carrying on the business activities in the said village. Assessee is a resident of Jalgaon, therefore, I am of the view that the provisions of Rule 6DD(g) will not help the assessee.

Regarding the genuineness of the transactions related arguments, I am of the view that the decisions cited above shall go against the assessee. I have also gone through the decision of the Coordinate Bench of the Tribunal in the case of ITO Vs. M/s. Dhanashree Ispat in ITA No.794/PUN/2013, dated 31-05-2017 relied on by the assessee. I find this part of the argument of the Ld. Counsel for the assessee is already attended to by the Pune Bench of the Tribunal in the said case. Contents of Para No.6 to 9 are relevant.

*“6. The Hon’ble Supreme Court of India in the case of Attar Singh Gurmukh Singh Vs. Income Tax Officer (supra) under similar circumstances deleted the disallowances made u/s. 40A(3) by holding as under :*

*“4. As to the validity of section 40A(3), it was urged that, if the price of the purchased material is not allowed to be adjusted against the sale price of the material sold for want of proof of payment by a crossed cheque or crossed bank draft, then the income tax levied will not be on the income but it will be on an assumed income. It is said that the provision authorising levy of tax on an assumed income would be a restriction on the right to carry on business, besides being arbitrary.*

*5. In our opinion, there is little merit in this contention. Section 40A(3) must not be read in isolation or to the exclusion of rule 6DD. The section must be read along with the rule. If read together, it will be clear that the provisions are not intended to restrict the business activities. There is no restriction on the assessee in his*

trading activities. Section 40A(3) only empowers the Assessing Officer to disallow the deduction claimed as expenditure in respect of which payment is not made by crossed cheque or 'crossed bank draft. The payment by crossed cheque or crossed bank draft is insisted on to enable the assessing authority to ascertain whether the payment was genuine or whether it was out of the income from undisclosed sources. The terms of section 40A(3) are not absolute. Considerations of business expediency and other relevant factors are not excluded. Genuine and bona fide transactions are not taken out of the sweep of the section. It is open to the assessee to furnish to the satisfaction of the Assessing Officer the circumstances under which the payment in the manner prescribed in section 40A(3) was not practicable or would have caused genuine difficulty to the payee. It is also open to the assessee to identify the person who has received the cash payment. Rule 6DD provides that an assessee can be exempted from the requirement of payment by a crossed cheque or crossed bank draft in the circumstances specified under the rule. It will be clear from the provisions of section 40A(3) and rule 6DD that they 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. ( *Mudiam Oil Company v. ITO* [1973] 92 ITR 519 (AP)). If the payment is made by a crossed cheque drawn on a bank or crossed bank draft, then it will be easier to ascertain, when deduction is claimed, whether the payment was genuine and whether it was out of the income from disclosed sources. In interpreting a taxing statute, the court cannot be oblivious of the proliferation of black money which is under circulation in our country. Any restraint intended to curb the chances and opportunities to use or create black money should not be regarded as curtailing the freedom of trade or business.”

7. The Hon'ble Rajasthan High Court in the case of *Smt. Harshila Chordia Vs. Income Tax Officer* (supra) deleted the disallowances made u/s. 40A(3) by observing that no disallowance u/s. 40A(3) could be made by taking a hyper technical view where the transactions are genuine.

8. The Hon'ble Punjab and Haryana High Court in the case of *Gurdas Garg Vs. Commissioner of Income Tax* (supra) while considering similar issue where disallowances u/s. 40A(3) was made deleted the disallowance by observing that where genuineness of transaction made in cash in excess of Rs.20,000/- was not disbelieved by authorities, the same cannot be disallowed u/s. 40A(3) of the Act.

9. In the present case, the payment made by the assessee to the individual truck driver has not been disputed. It is not the case of Department that the payments made by the assessee are not genuine or the payees are not identifiable. The assessee has sufficiently explained the circumstances under which the payments have been made to the truck drivers in cash. The Assessing Officer made disallowance by taking a pedantic view of the cash transactions. Where cash payments are made under bonafide conditions and no doubt is raised over genuineness of the payments and the payees are identifiable; no disallowances u/s. 40A(3) is warranted. Thus, in view of the facts of case and various decisions discussed above, we do not find any error in the findings of Commissioner of Income Tax (Appeals) in deleting disallowances of Rs.60,73,403/- made by the Assessing Officer u/s. 40A(3) of the Act. We concur with the findings of Commissioner of Income

*Tax (Appeals). Accordingly, ground Nos. 1 and 2 raised by the Department in appeal are dismissed.”*

Considering the above, this argument raised by the assessee is dismissed. Further, I examined the order of CIT(A) on this issue and find it relevant to extract the contents of Para No.5.2 for the sake of completeness of this order. The said Para is reproduced as under :

*“5.2 I have carefully considered the facts of the case and rival contentions. On perusal of the same it has been noticed that the A.O. has rejected all the contentions raised by the appellant during assessment.*

*The first contention raised by the appellant is that the appellant had made payments to the supplier J.K. Wines at village Vadoda, where no banking facilities are available at the time of payment and hence covered by exception, provided in Rule 6DD(g). On perusal of the provision of Rule 6DD(g), it has been noticed that the payment is received by a person, i.e. M/s. J.K.Wines, who was carrying on its business at Jalgaon, where ample banking facilities are available and hence exception to Rule 6DD(g) is not applicable to the case under appeal. The above proposition is supported by observations of the Tribunals in the following cases where it has been laid down as under :*

*i) Virupa Townships Vs. ACIT (2014) 62 SOT 0083 (Visakhapatnam)*

*In this case in Para 19, the Hon’ble ITAT has observed as under :*

*So far as addition of the rest of the amount sustained by the CIT(A) is concerned, though assessee has stated that such payments come within the ambit of sub-rule(g) of Rule 6DD, however, assessee is required to substantiate the fact by producing credible evidence that there is no banking facilities available in those areas to whom payments were made, ordinarily resides or not carrying on any business or profession.*

*ii) DCIT Vs. Abhinandana Housing Pvt. Ltd. (2014) 42 CCH 0015 (Hyd-Trib)*

*In this case in para 7, the Hon’ble ITAT, has observed as under :*

*As far as the amount of Rs. 18,62,375 claimed to have been paid to the land owners in places where no banking facility was available thereby attracting clause (g) of Rule 6DD, AO observed that persons to whom payments were made are residing in villages located in Districts of Guntur and Krishna, which are most developed districts in the state and are covered by banking facilities. Therefore, he disallowed the cash payments made of Rs. 18,62,375. The Hon’ble ITAT had disallowed the cash payments made to the persons, where they were carrying on business/residing where banking facility was available.*

*From the above observations/findings of the Hon’ble Tribunals, it is evident that Rule 6DD(g) is applicable where the person to whom cash payment was made is carrying on business at a place where banking facility is not available. The Rule is not applicable where the person making payment resides in a village, where banking facility is not*

available. In the case under appeal payment is made to M/s. J.K. Wines, Jalgaon, where the banking facility is available and hence no exception under Rule 6DD(g) is applicable. In view of the above facts and discussion, the first contention of the appellant is rejected.

The second contention raised by the appellant is that the payments made on bank holidays are covered by exception provided in Rule 6DD(j) and hence disallowance u/s.40A(3) in respect of such payments is not justified. In this regard it has been noticed that the appellant has made following payments on bank holidays.

Date	Amount	Remark
14/06/2009	15,000/-	Sunday
14/06/2009	18,000/-	Sunday
06/09/2009	17,000/-	Sunday
06/09/2009	16,000/-	Sunday
27/09/2009	18,000/-	Sunday
27/09/2009	17,000/-	Sunday
28/09/2009	18,000/	Dashara (Vijaya Dashmi)
28/09/2009	18,000/	Dashara (Vijaya Dashmi)
08/11/2009	19,000/-	Sunday
08/11/2009	19,000/-	Sunday
17/01/2010	19,000/-	Sunday
17/01/2010	16,000/-	Sunday
24/01/2010	18,000/-	Sunday
24/01/2010	19,000/	Sunday
26/01/2010	19,000/	Republic Day
26/01/2010	19,000/	Republic Day
31/01/2010	19,000/	Sunday
31/01/2010	17,000/-	Sunday
14/02/2010	19,000/	Sunday
14/02/2010	15,000/-	Sunday
<b>Total</b>	<b>3,55,000/-</b>	

The Rule 6DD(j) reads as under :

“(j) Where the payment was required to be made on a day on which the banks were closed either on account of holidays or strike.”

Therefore the above mentioned payments are covered by Rule 6DD(j) of the I.T. Rules, 1962. The contention of the A.O. that on Gandhi Jayanti and Republic day, shop was closed and hence no cash payment could have been made cannot be accepted as though the shop was closed, the payment can be made from office or residence to the supplier. Further the appellant has not made any payment on Gandhi jayanti. In view of the above facts and discussion, the second contention of the appellant is accepted and the addition of Rs.3,55,000/- is deleted.

The third contention of the appellant is that the cash payments made below Rs.20,000/- should not be disallowed but subsequent payment after consideration of which, the total payment exceeded Rs.20,000/- only should be disallowed. The above contention of the appellant cannot be allowed as the provisions of section 40A(3) reads as under :

“Where the assessee incurs any expenditure in respect of which payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque, drawn on a bank or account payee bank draft, exceeds twenty thousand rupees, no deduction shall be allowed in respect of such expenditure”

*From the above provision, it is clear that all the cash payments made on a day total of which exceeds Rs.20,000/- are to be disallowed. The third contention of the appellant is therefore rejected.*

*The fourth contention of the appellant is that the object of section 40A(3) is to curb black money and not to put an impediment, over trade and business and as all the transactions with M/s. J.K. Wines are duly recorded in the books of accounts, disallowance u/s.40A(3) is not justified. The appellant has not brought on record the business exigency and compelling circumstances for making cash payment to supplier, who is having bank accounts and the appellant is also bank accounts as is evident from appellant's balance sheet. In view of the above facts and ratio laid down by Hon'ble ITAT, Pune in the case of T.G. Mutha Vs. ITO 54 ITD 460, relied on by the A.O., the fourth contention of the appellant is rejected.*

*In nutshell the addition u/s.40A(3) of Rs.17,21,642/- is deleted to the extent of Rs.3,55,000/- and confirmed to the extent of Rs.13,66,642/-. The A.O. is directed accordingly. Ground No.1 is partly allowed."*

9. In my opinion, the order of the CIT(A) and fair and reasonable and it does not call for any interference. Accordingly, the grounds raised by the assessee are dismissed.

10. In the result, appeal of the assessee is dismissed.

Order pronounced on this 23<sup>rd</sup> day of March, 2018.

**Sd/-**

**(D.KARUNAKARA RAO)**

**लेखा सदस्य / ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक Dated : 23<sup>rd</sup> March, 2018.  
Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-2, Nashik
4. आयकर आयुक्त / The CIT-2, Nashik
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "SMC" / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune