

आयकर अपीलिय अधीकरण, न्यायपीठ – “C” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “C” KOLKATA*

Before **Shri N.V.Vasudevan, Judicial Member** and
Shri Waseem Ahmed, Accountant Member

ITA No.390/Kol/2017
Assessment Year :2012-13

M/s Sonex TV Appliances Pvt. Ltd.3C, Chowringhee Lane, Kolkata-16 [PAN No.AAFCS 7583 Q]	V/s.	Income Tax Officer, Ward-8(4), Aayakar Bhawan,P-7, Chowringhee Square,Kolkata-69
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Manoj Kataruka, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri Saurabh Kumar, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	01-03-2018
घोषणा की तारीख/Date of Pronouncement	27-04-2018

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-17, Kolkata dated 02.02.2017. Assessment was framed by ITO Ward-8(4), Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide his order dated 25.02.2015 for assessment year 2012-13. Assessee has raised following ground:-

- “1. That on the facts and in the circumstances of the fact, the action of the Ld. CIT(A) in upholding the addition of Rs.54,32,333/- u/s 40A(3) of the Act made by the AO is erroneous and bad in law.*
- 2. That on the facts and in respect to the circumstances of the case the action of the Ld. CIT(A) in upholding the action of the AO to hold the payments of Rs.54,32,333/- made by the appellant to M/s Neosa Electronic Pvt. Ltd. by way of adjustment against liability attracts the provision of Section 40A(3) of the Act is arbitrary, excessive and bad in law.*

3. That the additions made by the AO and upheld by the Ld. CIT(A) is arbitrary, excessive and illegal.

4. That the above grounds of appeal shall be argued in detail at the time of hearing and the appellants crave leave to submit, add, alter, modify, amend any grounds of appeal or submit any additional grounds of appeal on or before the time of hearing.”

Shri Manoj Kataruka, Ld. Advocate appeared on behalf of assessee and Shri Saurabh Kumar, Ld. Departmental Representative appeared on behalf of Revenue.

2. Ground No.1 to 4 are inter-related and therefore being taken up together for the purpose of adjudication and for the sake of brevity. The issue raised is that Ld. CIT(A) erred in confirming the order of Assessing Officer by sustaining the addition of ₹ 54,32,333/- u/s 40A(3) of the Act.

3. Briefly stated facts are that assessee is a private limited company and engaged in trading business of electronic goods. The assessee in its books of account has shown M/s Neos Electronics Pvt. Ltd. (NEPL for short) as sundry creditors on account of purchases of goods. During the year, there was credit balance in the books of assessee in the name of NEPL which was adjusted by way of book entry. The details of the book entry stand as under:-

Sl.No	Date	Name of party	Adjusted amount
1	20.12.11	Panasonic India Pvt. Ltd.	42,75,989.87
2	06.01.12	-do-	11,56,343

Thus, the liability as stated above shown by assessee in the name of NEPL was adjusted by way of book entry with M/s Panasonic India Pvt. Ltd. However, the AO was of the view that the adjustment by way of book entry has violated the provision of Section 40A(3) of the Act. As such the adjustment by way of book entry also does not fall in any of exception provided under Rule 6DD of the Income Tax Rules, 1962. Therefore, the AO

disallowed the sum by holding that there is a violation of provision of Section 40A(3) of the Act and added to the total income of assessee.

4. Aggrieved, assessee preferred an appeal before Ld. CIT(A) who confirmed the order of AO by observing as under:-

“Decision: It has been submitted by the A/R of the assessee that the issue is covered by the decision of my predecessor in A. No.51/CIT(A)-VIII/2014-15, dated 24.07.2014 wherein it has been observed as under:-

‘As per provision of section 40A(3), no deduction is allowed in respect of which a payment or aggregate of payments exceeding Rupees Twenty Thousand are made to a person in a day otherwise than by an account payee cheque or bank draft drawn on ac bank. However no disallowance is made as per this section under circumstances prescribed in Rule 6DD.

Under Rule 6DD there is limited area within which payments by book adjustment can be considered to fall within the exception to the rule of prohibition contained in section 40A(3). According to clause (e) of rule 6DD it is the expenditure in respect of which the payment by way of book adjustment is made to the payee who directly supplied the goods or services to the assessee, that falls outside the mischief of rule of prohibition to section 40A(3). Other than this there is no exception provide to book adjustments.

The case of appellant does not fall within the above exception and hence there is no need to discuss the exception any further.

Further the question involved in respect in the case of the appellant has been dealt with in CIT vs. Kishan Chand Maheshwari Dass (1980 121 ITR 232 P&H) the following are relevant excerpts of the judgment:-

‘At the instance of the revenue, the Income-tax Appellate Tribunal, Chandigarh Bench, ha referred the following two questions of law for the opinion of this court:

- 1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the word “**expenditure**” used in section 40A(3) does not cover expenditure on purchases of goods.*
- 2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the prohibition in section 40A(3) was attracted even in cases of payments by book adjustments and where the book adjustments were not made by the assessee directly in the accounts of the party who supplied the goods or services to the assessee.*

It was held that section 40A(3) covers expenditure on purchase of goods and in respect of question no. 2 it was held that

In view of our answer to question No.1 and because of Clause (e) of Rule 6DD, which reads, ‘where the payment is made by way of adjustment against the amount of any liability incurred by the payee for any goods supplied or services rendered, by the assessee to such payee’. It is clear that there is a limited area within which payments by

book adjustment can be considered to fall within the exception to the rule of prohibition contained in the said provision of law. According to clause (e) it is the expenditure in respect of which the payment by way of book adjustment is made to the payee who directly supplied the goods or services to the assessee, that falls outside the mischief of rule of prohibition to section 40A(3). In this view of the matter, we are of the opinion that the Tribunal was right in holding that the prohibition in section 40A(3) was attracted even in cases of payments by book adjustments and where the book adjustments were not made by the assessee directly in the accounts of the party who supplied the goods or services to the assessee. Thus, the answer to this question in the affirmative.

Based on the above analysis, including the judicial precedent cited above, I uphold the action of the AO in invoking provision of section 40A(3) on the book adjustment entries of Rs.603150/-. Accordingly, disallowance of Rs.603150/- is confirmed. In result Ground No. 3 and 4 of the appeal are dismissed.”

Aggrieved by the above finding of Ld. CIT(A), the assessee is in appeal before the Tribunal.

5. At the outset, Ld. AR before submitted that co-ordinate Bench of this Tribunal in assessee's own case in ITA No.1593/Kol/2014 pertaining to AY 2011-12 vide order date 04.08.2016 involving identical facts decided the issue in favour of assessee.

On the order hand, Ld. DR vehemently relied on the order of Authorities Below.

6. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset, we find that the Co-ordinate Bench of this Tribunal in assessee's own case in ITA No.1593/Kol/2014 having identical facts and circumstances has decided the issue in favour of assessee. The relevant extract of the order is reproduced below:-

“4.4 We have heard both the parties and perused the material available on record, we are of the view that there is no violation of provisions of section 40A(3) of the Act. As it is abundantly clear from the facts that the assessee has paid Rs.6,301150/- to Shivam Enterprises on the instruction of its creditor M/s Charco Electronics Pvt. Ltd. through account payee cheque. There is no cash payment at all. Therefore, we are of the view that addition made by

assessing officer and confirmed by Id. CIT(A) needs to be deleted. Accordingly, we deleted the addition of Rs.6,03,150/-.
4.5 In the result, the appeal filed by the assessee (in ITA No.1593/Kol/2014), is allowed.”

Respectfully following the same, we reverse the order of Ld. CIT(A) and direct the AO to delete the same. Accordingly, assessee's appeal is allowed.

7. In the result, assessee's appeal stands allowed.

Order pronounced in the open court 27/04/2018

Sd/-
(न्यायिक सदस्य)
(N.V.Vasudevan)
(Judicial Member)
Kolkata,
*Dkp, Sr.P.S

Sd/-
(लेखा सदस्य)
(Waseem Ahmed)
(Accountant Member)

दिनांक:- 27/04/2018 कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-M/s Sonex TV Appliances Pvt. Ltd., 3C, Chowringhee Lane,Kolkata-16
2. प्रत्यर्थी/Respondent-ITO, Ward-8(4), Aayakar Bhawan, P-7, Chowringhee Sq. Kolkata-69
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary, Head of
Office/DDO
आयकर अपीलीय अधिकरण,
कोलकाता ।