

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL  
' B' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।  
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No. 1672/CHNY/2017  
निर्धारण वर्ष /Assessment year : 2013-2014.

Natesan Krishnamurthy,  
24/60, Mookathal Street,  
Purasawalkam,  
Chennai 600 007.

**Vs.** The Income Tax Officer,  
Non Corporate Ward 9(2)  
Chennai 600 034.

[PAN ANCPK 2634B]  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. M. Karunakaran, Adv  
प्रत्यर्थी की ओर से /Respondent by : Mrs. Ruby George, IRS, CIT.

सुनवाई की तारीख/Date of Hearing : 19-06-2018  
घोषणा की तारीख /Date of Pronouncement : 20-06-2018

**आदेश / ORDER**

**PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER**

Assessee in this appeal filed against an order dated  
23.05.2017 of Id. Commissioner of Income Tax (Appeals)-10, Chennai,  
is aggrieved on a disallowance of ₹34,68,15,452/- made u/s.40A(3) of

the Income Tax Act, 1961 (in short "the Act") which was confirmed by the Id. Commissioner of Income Tax (Appeals).

2. Facts apropos are that assessee claiming to be a commission agent had filed his return for the impugned assessment year declaring income of ₹9,23,600/-. Assessee was one of the bidders who participated in auctions of unredeemed old gold ornaments, conducted by one M/s. Manappuram Finance Limited. Though in his original return, sales/gross receipts shown in the profit and loss account was only ₹6,66,134/- in a revised return filed sales/gross receipts of ₹34,74,81,586/- was shown. Corresponding purchases were for ₹34,68,15,452/-. Assessee was required to explain how purchases of such huge volume could be made when his capital in the business was only ₹22,67,797/-. Thereupon assessee submitted that a group of persons who wanted to participate in the auctions held by M/s. Manappuram Finance Ltd formed a syndicate. As per the assessee, he was participating in the auction for such syndicate. Contention of the assessee was that if the bid made by him was successful, he collected the money from prospective purchasers who were the members of the syndicate, and remitted it to M/s. Manappuram Finance Ltd. As per the assessee, M/s. Manappuram Finance Ltd collected 1% tax at source from such payments made by him for the old gold ornaments. In

other words, explanation of the assessee was that money collected from prospective purchasers were used by him for effecting payments in accordance with bid and old gold ornaments received from M/s. Manappuram Finance Ltd was distributed among such syndicate members.

3. Ld. Assessing Officer put the assessee on notice as to why Section 40A(3) of the Act should not be applied since the payments made to M/s. Manappuram Finance Ltd exceeded ₹20,000/- in cash. Reply of the assessee to the notice read as under:-

*"" .. I am dealing in Gold jewellery and I had made successive bidding of Gold Auction Conducted by M/s Manappuram Finance Limited, a Non Banking Company recognised by Reserve Bank of India and dealing only in banking business of accepting deposit and lending of finance against security during FY 2012-13.*

*The meaning of Banking Company as per Section 5( c) in BANKING regulation Act, 1949.*

*(c) "banking company" means any company which transacts the business of banking [in India}. Explanation - Any Company which is engaged in the manufacture of goods or carries on any trade and which accepts deposits of money from the public merely for the purpose of financing its business as such manufacturer or trader shall not be deemed to transact the business of banking within the meaning of this clause;*

*During the process of auction the company's policy was to settle the deal with successive bidder in the evening offer negotiation of prices and accept cash from*

*outside bidders like me or by Ch/RTGS if it was bid successfully by Manappuram Group. The usual procedure will be to form a syndicate bidders ranging from 10 to 25 persons to a void increase in the, cost of auction gold and' after successive bidding by me, I will collect cash from each of the members of the syndicate and will/distribute the gold according to the payments collected from them and will be taken as sales in my account as manappuram Finance had raised invoice in my name and accordingly TDS was deducted and. which was shown as purchase in my account.*

*Since the Purchase was in auction from M/s Manappuram Finance Ltd and I was new customer to the company in buying auctioned gold from them, it was insisted that only cash dealing was permitted to me This was one of points taken for consideration .ot business expediency.*

*In the case of M/s Kanishk Gold Pvt Ltd Vs Dept of Income tax, ITAT Chennai has made the contention that the party had accepted old gold ornaments and in exchange sold the fresh gold jewellery in exchange and collected / refunded the differential amount which will not attract Sec 40(A)(3) and the purchasers was deleted from addition of income.*

*In my case as mentioned above would like to clarify that*

*1.I had made cash payment as I was a new customer to M/s Manappuram Finance Limited.*

*2.The Company is a NDFC Company recognised by RBI and are into acceptance of deposit and lending finance on security and are not into any manufacturing or trading company.*

*3.Already I am over burdened with financial crises due to highly volatile market conditions and my prior commitments are huge and led to several cases of cheque bounce against me.*

*4.The business of gold is done on a minimum margins with huge financial dealing and the addition u/s 40(A)(3) for the purchasers will be a very big financial burden with*

*such a little margin and I will not be able to meet the demand through out my life and will made my life miserable and lead tounwarranted action which will not only spoil me and put my entire family's future at stake.*

*5, Hence I pray not to invoke the section and matter be dropped”.*

Assessee also relied on Rule 6DD of the Income Tax Rules, 1962 (in short “the Rules”) for justifying the payments made in cash.

**4.** However, Id. Assessing Officer was not impressed by the above reply. According to him, assessee’s payments were not covered by any of the clauses in Rule 6DD of the Rules. He held that Section 40A(3) of the Act was squarely applicable on the cash purchases made by the assessee. A disallowance of ₹34,68,15,452/- was made and assessment completed accordingly.

**5.** Aggrieved, assessee moved in appeal before the Id. Commissioner of Income Tax (Appeals). Contention of the assessee was that he had participated in the auction conducted by M/s. Manappuram Finance Ltd for purchasing unredeemed old gold jewelers on behalf of a number of purchasers. As per the assessee, terms of the auction required the highest bidder to deposit part of the auctioned amount with M/s. Manappuram Finance Ltd and there was no way he could know what amount would be required for the said

purpose. As per the assessee, auction amount would be known only when auction was complete. According to the assessee, money was received from the ultimate buyers of the gold jewellery forming the syndicate. Contention of the assessee was that he was under the compulsion to collect cash from syndicate members and make payments for the bid. As per the assessee, identity of the person to whom he had made the payments were established and genuineness of the purchases were not doubted. Submission of the assessee was that there were compelling circumstances to make cash payments and unless payments were made immediately, the jewellery purchased through auction would be lost. Relying on the judgment of Hon'ble Calcutta High Court in the case of *Giridharlal Goenka vs. CIT*, 179 ITR 122, it was submitted by the assessee that a transaction once found to be genuine, Section 40A(3) of the Act, enacted to check evasion of taxes, had no application. Reliance was also placed on the judgment of Hon'ble Jurisdictional High Court in the case of *CIT vs. Chrome Leather Co. Pvt. Ltd*, 235 ITR 708, that of Hon'ble Rajasthan High Court in the case of *Smt. Harshila Chordia vs. CIT* vs. 298 ITR 349, that of Hon'ble Delhi High Court in the case of *CIT vs. Rhydburg Pharmaceuticals Ltd*, 269 ITR 561 and *Ramaditya Investments vs. CIT*, 262 ITR 491, that of Hon'ble Calcutta High Court in the case of *Goenka Agencies vs. CIT*, 263 ITR 145, that of Hon'ble Punjab and Haryana High Court in the

*case of CIT vs. Nikko Auto Ltd, 256 ITR 476 and Aggarwal Steel Traders vs. CIT, 250 ITR 738, that of Hon'ble Kerala High Court in the case of CIT vs. Eastern Condiments Pvt Ltd, 261 ITR 76, that of Hon'ble Gauhati High Court in the case of Shri.Mahabir Industries vs. CIT, 220 ITR 459, that of Allahabad High Court in the case of CIT vs. Suresh Kumar Agarwal, 249 ITR 113, that of Hon'ble Madhya Pradesh High Court in the case of CIT vs. Rajendra Rice Mill, 232 ITR 217 and CIT vs. Mahavir Stores, 232 ITR 300 and that of Hon'ble Apex Court in the case of Attar Singh Gurmukh Singh vs. ITO, 191 ITR 667.*

**6.** Ld. Commissioner of Income Tax (Appeals) was not impressed by any of the above arguments made by the assessee. Ld. Commissioner of Income Tax (Appeals) noted that assessee could not justify the expenditure in cash by demonstrating how he fell within any of the limbs of Rule 6DD. According to him, Section 40A(3) of the Act stood attracted even when the payments were genuine and this was clear from the judgment of Hon'ble Apex Court in the case of *Attar Singh Gurmukh Singh (supra)*. As per the Ld. Commissioner of Income Tax (Appeals) genuineness of the payments was not a factor which was to be considered for application of Section 40A(3) of the Act. According to him, assessee having not established how he stood exempt from the application of Section 40A(3) of the Act, the

disallowance made by the Id. Assessing Officer was justified. He confirmed the disallowance.

7. Now before us, the Id. AR strongly assailing the orders of the lower authorities submitted that the terms of the auction clearly required the highest bidder to deposit a part of the bid amount immediately on announcement of the successful bid. According to him, assessee was therefore compelled to make the payment in cash. Contention of the Id. Authorised Representative was that assessee collected money from members of the syndicate and paid it to M/s. Manappuram Finance Ltd and these were all duly accounted and never doubted by the Revenue. As per the Id. Authorised Representative, various contingencies mentioned in Rule 6DD were not exhaustive but only illustrative. According to him, if assessee was able to establish that there existed circumstances to show requirements of paying in cash, Section 40A(3) of the Act could not be applied. Reliance was placed on the decision of Jaipur Bench of the Tribunal in the case of M/s. A Daga Royal Arts vs. ITO (ITA No1065/JP/2016, dated 15.05.2018) that of Delhi Bench of this Tribunal in the case of Vivek Gupta vs. ITO (ITA No.5727/Del/2011, dated 14.08.2013) and that of Chennai Bench of the Tribunal in the case of Mayur Marketing vs. ITO (376/Mds/2012, dated 11.09.2012).

**8.** Per contra, Id. Departmental Representative strongly supporting the orders of the lower authorities submitted that no exceptional circumstance was demonstrated by the assessee warranting an exclusion from application of Section 40A(3) of the Act.

**9.** We have considered the rival contentions and perused the orders of the authorities below. It is not disputed that assessee had made payments in cash for the bid amounts to M/s. Manappuram Finance Ltd. As per the assessee, cash was collected from various syndicate members who wanted old gold jewellery and assessee was representing such syndicate. In other words, as per the assessee, he was acting as conduit for the purchases of the old gold jewellery and bidding on behalf of the syndicate members who wanted to purchase old gold jewellery from M/s. Manappuram Finance Ltd.. However, Id. Assessing Officer has clearly noted that assessee in his revised return had admitted purchase of gold from M/s. Manappuram Finance Ltd for ₹34,68,15,452/- and sale thereof for ₹34,74,81,586/-. It is not disputed by the assessee that the amounts paid to M/s. Manappuram Finance Ltd were in cash and exceeded threshold limit of ₹20,000/- in each case. Contention of the assessee is that there were unavoidable circumstance which required him to pay the bid amount in cash and

this was a relevant factor which needed to be considered while deciding whether Section 40A(3) of the Act was to be applied or not. Section 40A(3) of the Act, which is apposite is reproduced hereunder:-

*'(3) Where the assessee incurs any expenditure in respect of which a 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.*

*(3A) Where an allowance has been made in the assessment for any year in respect of any liability incurred by the assessee for any expenditure and subsequently during any previous year (hereinafter referred to as subsequent year) the assessee makes payment in respect thereof, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, the payment so made shall be deemed to be the profits and gains of business or profession and accordingly chargeable to income-tax as income of the subsequent year if the payment or aggregate of payments made to a person in a day, exceeds twenty thousand rupees :*

*Provided that no disallowance shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-section (3) and this sub-section where a 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, in such cases and under such circumstances as may be prescribed, having regard to the nature and extent of banking facilities available, considerations of business expediency and other relevant factors.*

*Provided further that in the case of payment made for plying, hiring or leasing goods carriages, the provisions of sub-sections (3) and (3A) shall have effect as if for*

*the words "twenty thousand rupees", the words "thirty-five thousand rupees" had been substituted".*

Rule 6DD set out the circumstances where payments could exceed the threshold limit mentioned in Section 40A(3) of the Act. Said rule 6DD is reproduced hereunder:-

*'No disallowance under sub-section (3) of section 40A shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-section (3A) of section 40A where a 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 in the cases and circumstances specified hereunder, namely :-*

*(a) where the payment is made to-*

*(i) the Reserve Bank of India or any banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949) ;*

*(ii) the State Bank of India or any subsidiary bank as defined in section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959) ;*

*(iii) any co-operative bank or land mortgage bank ;*

*(iv) any primary agricultural credit society or any primary credit society as defined under section 56 of the Banking Regulation Act, 1949 (10 of 1949) ;*

*(v) the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956) ;*

*(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 ;*

*(c) where the payment is made by-*

- (i) any letter of credit arrangements through a bank,*
- (ii) a mail or telegraphic transfer through a bank ;*
- (iii) a book adjustment from any account in a bank to any other account in that or any other bank ;*
- (iv) a bill of exchange made payable only to a bank ;*
- (v) the use of electronic clearing system through a bank account ;*
- (vi) a credit card ;*
- (vii) a debit card.*

*Explanation.-- For the purposes of this clause and clause (g), the term "bank" means any bank, banking company or society referred to in sub-clauses (i) to (iv) of clause (a) and includes any bank [not being a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949)], whether incorporated or not, which is established outside India ;*

*(d) 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 ;*

*(e) where the payment is made for the purchase of-*

- (i) agricultural or forest produce ; or*
- (ii) the produce of animal husbandry (including livestock, meat, hides and skins) or dairy or poultry farming ; or*
- (iii) fish or fish products ; or*
- (iv) the products of horticulture or apiculture,*  
*to the cultivator, grower or producer of such articles, produce or products ;*

*(f) where the payment is made for the purchase of the products manufactured or processed without the aid of power in a cottage industry, to the producer of such products ;*

*(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 ;*

*(h) where any payment is made to an employee of the assessee or the heir of any such employee, on or in connection with the retirement, retrenchment, resignation, discharge or death of such employee, on account of gratuity, retrenchment compensation or similar terminal benefit and the aggregate of such sums payable to the employee or his heir does not exceed fifty thousand rupees ;*

*(i) where the payment is made by an assessee by way of salary to his employee after deducting the income-tax from salary in accordance with the provisions of section 192 of the Act and when such employee-*

*(i) is temporarily posted for a continuous period of fifteen days or more in a place other than his normal place of duty or on a ship ; and*

*(ii) does not maintain any account in any bank at such place or ship ;*

*(j) where the payment was required to be made on a day on which the banks were closed either on account of holiday or strike ;*

*(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 ;*

*(l) where the payment is made by an authorised dealer or a money changer against purchase of foreign currency or travellers cheques in the normal course of his business.*

*Explanation.-- For the purposes of this clause, the expressions "authorised dealer" or "money changer" means a person authorised as an authorised dealer or a money changer to deal in foreign currency or foreign exchange under any law for the time being in force.*

Payments made by the assessee to M/s. Manappuram Finance Ltd for purchasing old gold ornaments did not fall within any limbs of Rule 6DD.

**10.** One of the contentions of the assessee is that though the payments made by him in cash did not fall within any of the sub-clauses of Rule 6DD, still Section 40A(3) of the Act could not be applied, since business expediency and other relevant factors necessitated such payments. To a specific question raised by the Bench, it was stated by the Id. Counsel for the assessee that advertisements placed by M/s. Manappuram Finance Ltd for selling its old gold ornaments by auction, did not have any condition as to payments to be in cash mode only. However, according to him, assessee had to collect money from the syndicate members and business expediency required him to collect such money then and there, and pay it to M/s. Manappuram Finance Ltd. In our opinion, assessee failed to demonstrate that conditions of the bid required it to effect payments in cash, then and there, and payments could not have been made by cheque or demand draft or any other mode. It may be true that assessee had to collect money from the syndicate members whom he was representing. However, there is no explanation as to what stopped the assessee from effecting payments through banking

channels. Agreement with syndicate members if any, was not produced by the assessee before any of the lower authorities, or in other words, assessee could not demonstrate that it was representing any syndicate nor could it demonstrate that it was collecting cash from such syndicate members for making payments to M/s. Manappuram Finance Ltd. As to the decision of Co-ordinate Bench in the case of *Mayur Marketing (supra)* there the payments were made in cash, since supplier had insisted for cash payments after banking hours. In the case of *A. Daga Royal Arts (supra)* decided by Jaipur Bench of the Tribunal, there were both payments by cheque and cash on same days and there was a clear finding that payments in cash were made when it was so insisted by the seller. In the case of *Vivek Gupta (supra)* decided by Delhi Bench of the Tribunal, transactions done by the assessee were between two proprietorship concern and hence there was no outside payments in cash. Facts in all these cases, as well as in the cases cited by the assessee before the Id. Commissioner of Income Tax (Appeals) were entirely different from what is available before us in the case of the assessee. No doubt if an assessee is able to demonstrate a situation which compelled it to make payments in cash, then application of Section 40A(3) of the Act might be excused. However as mentioned by us, assessee before us has been unable to demonstrate any such situation, which could convince us to exempt

him from application of rigours of Section 40A(3) of the Act. We therefore do not find any reason to interfere with the orders of the lower authorities.

**11.** In the result, the appeal of the assessee stands dismissed.

Order pronounced on Wednesday, the 20th day of June, 2018, at Chennai.

**Sd/-**

(एन.आर.एस. गणेशन)

**(N.R.S. GANESAN)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

**Sd/-**

(अब्राहम पी. जॉर्ज)

**(ABRAHAM P. GEORGE)**

**लेखा सदस्य/ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated: 20th June, 2018

**KV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant   | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT           | 6. गार्ड फाईल/GF        |