

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DIVISION BENCH 'A', CHANDIGARH**

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER  
AND MS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

**ITA No.1145/Chd/2017**  
(Assessment Year : 2012-13)

M/s Gorsri Constructions  
Private Limited,, Village Takoli,  
P.O. Panarasa, Teh. Autt,  
Distt. Mandi (H.P.)

Vs.

The D.C.I.T.,  
Mandi  
(H.P.)

PAN: AABCG4994K  
(Appellant)

(Respondent)

Appellant by : Shri Amitoz Kamboj, CA  
Respondent by : Shri Akhilesh Gupta, JCIT  
Date of hearing : 21.05.2018  
Date of Pronouncement : 26.07.2018

**ORDER**

**PER ANNAPURNA GUPTA, AM:**

This appeal has been preferred by the assessee against the order of learned Commissioner of Income Tax (Appeals), Palampur (hereinafter referred to as CIT(Appeals)) dated 17.5.2017 ,relating to assessment year 2012-13.

2. Ground No.1 raised by the assessee reads as under:

*“1. That the Ld. Commissioner of Income Tax (Appeals) has wrongly confirmed the addition of Rs.1,55,000/- U/s 40 A(3) which is likely to be deleted.”*

3. Brief facts relating to the issue are that the assessee is a Pvt. Ltd. Company mainly engaged in the business of civil construction as a contractor. During the course of assessment proceedings, while verifying the books of accounts, it was noticed that assessee had made cash payments exceeding Rs.20,000/- to the following parties:-

| <u>S.No.</u> | <u>Name of the party to whom cash payment made</u> | <u>Date of payment</u> | <u>Amount paid in cash</u> |
|--------------|--|------------------------|----------------------------|
| 1.           | M/s Chamunda Stone Crusher                         | 25.02.2012             | 1,00,000/-                 |
| 2.           | M/s Shimla Automobiles                             | 28.06.2011             | 25,000/-                   |
| 3.           | M/s Shimla Automobiles                             | 12.03.2012             | 30,000/-                   |
| Total        |  |                        | 1,55,000/-                 |

4. The assessee vide reply dated. 5.2.2015 submitted that the payments had been made under unavoidable circumstances, However, the assessee failed to submit any evidence to substantiate his claim. Therefore, cash payments aggregating to Rs.1,55,000/- were disallowed for violation of the provisions of section 40A(3) of the IT Act, 1961.

5. Before the Ld.CIT(Appeals) the assessee contended that the payments had to be made in cash on account of exceptional circumstances existing. It was contended that M/s Chamunda Stone Crusher, Village Ropa, Distt. Mandi is situated at a place where there is no bank facility. As regards payment of Rs.25,000/- on 28.6.2011 and of Rs.30,000/- on 12.3.2012, it was submitted that a vehicle of the assessee, Bolero SLX, registration No.HP 34-D 1200, met with an accident in June, 2011 and as the authorized dealer of Mahindra and Mohindra Ltd. was stationed at Ner Chowk Teh. Sardar Mandi, the vehicle was to be carried to Ner Chowk for repair. As there was no bank account of the assessee at that station, the payment had to be made in cash under the circumstances. The Ld.CIT(A) dismissed the assessee's contention for the reason that the assessee had

not shown that the payments had been made in circumstances covered under rule 6DD of the Income Tax Rules, 1962.

6. Before us, the contention raised by the Ld. counsel for assessee was that the genuineness of the payment made having not been doubted and the assessee having shown the existence of conditions prompting payment to be made in cash, which was not disbelieved by the Revenue, no disallowance could be made merely because it was made in cash u/s 40A(3) of the Act. Reliance was placed on the decision of the ITAT Chandigarh Bench in the case of Income Tax Officer Vs. Smt. Shakun Jain (2004) 82 TTJ 857 (Chd). Copy of the order was placed before us.

7. The Ld. DR relied upon the order of the CIT(Appeals).

8. We have heard the contentions of both the parties. The issue before us relates to disallowance of expenses u/s 40A(3) on account of payments made in cash thereof in excess of the limits prescribed. The fact that payment was made in cash in violation of the limits prescribed u/s 40A(3) is not disputed. Further vis a vis the payments made the assessee had pointed out the compelling circumstances which prompted the payment to be made in cash as there being no banking facility where M/s Chamunda Stone Crushers was situated to whom payment of Rs.1,00,000/- was made and there being no bank

account of the appellant where Shimla Automobiles was situated to whom the rest of the payments was made amounting to Rs.55,000/- in all. No infirmity has been pointed out in the aforesaid explanation of the assessee by the Revenue. Nor do we find that the genuineness of the transactions has been doubted. In such circumstances where the genuineness of the transaction having not been doubted and the assessee having explained the business expediency for making the payment in cash, there is no reason at all to make any disallowance under section 40A(3) of the Act. The issue is squarely covered by the decision rendered by the Hon'ble jurisdictional High Court in the case of Gurdas Garg vs Commissioner of Income Tax Appeals, Bhatinda & Another in ITA No.413 of 2014 dt.16 July 2015, categorically holding that the genuineness of the transaction not being disbelieved as also the reasons for making the payment in cash, no disallowance was warranted u/s 40A(3) of the Act.

9. The action of the CIT(Appeals) in upholding the disallowance made u/s 40A(3) of Rs.1,55,000/- is, therefore, set aside.

Ground of appeal No.1 raised by the assessee is, therefore, allowed.

10. Ground of appeal No.2 raised by the assessee reads as under:

*“2. That the Ld. Commissioner of Income Tax (Appeals) has wrongly confirmed the addition of Rs.2,50,000/- paid as rent to agriculturist taking agricultural land on rent U/s 197- A/197 which is likely to be deleted.”*

11. The above ground was not pressed before us by the assessee. The same is, therefore, dismissed as not pressed.

12. Ground of appeal No.3 raised by the assessee reads as under:

*“3. That the Ld. Commissioner of Income Tax (Appeals) has wrongly confirmed the addition of Rs.35,000/- paid as professional charges for 2 persons u/s 40(a)(ia) which is likely to be deleted.”*

13. Brief facts relevant to the issue are that the Assessing Officer disallowed expenditure relating to payment made to one Shri Sanjay Vaidya, Surveyor, at Rs.35,000/- under section 40(a)(ia) since no tax had been deducted at source on the same as per the provisions of section 194I of the Act. The assessee vide reply dated 05-02-2015 submitted that the payment of Rs.35,000/- had actually been made to two persons Shri Sanjay Vaidya (Surveyor) & to Shri Mohinder Sharma (Surveyor), each below the limit prescribed for tax deduction at source u/s 194I of the Act, at Rs.23,000/- & Rs.12,000/- respectively while in the ledger, only one entry was posted. However to substantiate this claim, assessee failed to submit any evidence. In the absence of any supporting evidence, Rs.35,000/- were disallowed u/s 40(a)(ia) of the Act.

14. During appeal, the assessee filed photocopy of the receipts issued by Shri Sanjay Vaidya, Supervisor for

Rs.23,000/- and Shri Mahinder Sharma, Supervisor for Rs.12,000/- and submitted that the addition of Rs.35,000/- may be deleted. As the above receipts were not filed before the Assessing Officer, the CIT(A) held that they constituted additional evidence, and since the assessee had not shown that it was prevented by any reasonable cause from producing these receipts during assessment proceedings, refused to admit the same. The addition made was therefore upheld.

15. Before us, the Ld. counsel for assessee reiterated the contentions made before the CIT(Appeals).

16. The Ld. DR relied upon the order of the CIT(Appeals).

17. We have heard contentions of both the parties, perused the orders of authorities below and also gone through the documents placed before us. The issue relates to disallowance of professional charges on account of non-deduction of TDS. The contention of the Ld. counsel for assessee is that no TDS was deductible since payment related to professional charges paid to two persons which was less than the limit prescribed for tax deduction at source u/s 194J of the Act i.e. Rs.30,000/-. The CIT(Appeals) upheld the addition, refusing to admit additional evidence filed in this regard by the assessee, since the assessee failed to show reasonable cause for not adducing the same before the Assessing Officer.

18. We are not in agreement with the Ld.CIT (Appeals). The documents filed by the assessee being bills of the two persons to whom payments were made below the prescribed limit for TDS, they were patently relevant for adjudicating the issue, going to the root of the matter and interest of justice demanded that the CIT (Appeals) admit the same. The same having now been filed before us, we admit the same as evidence for the aforesaid reasons. Further we find that the bills substantiate the assessee's contention that the payments on account of professional charges were below the prescribed limit of the deduction at source. We, therefore, are convinced that no TDS was required to be deducted at source on the payments of the professional charges. The disallowance, therefore, made under section 40(a)(ia) is directed to be deleted. Ground of appeal No.3 raised by the assessee is allowed.

19. Ground No.4 raised by the assessee reads as under:

*"4. That the Ld. Commissioner of Income Tax (Appeals) has wrongly confirmed the addition of Rs.41,064/- for maintenance of canteen expenses Rs.1,84,414/- under the head repair and maintenance of cars and Rs.48685/- out of expenses of telephone and internet for personal use which are likely to be deleted."*

20. Brief facts relating to the issue are that the Assessing Officer disallowed 1/6<sup>th</sup> of Office Maintenance and Canteen Expenses incurred by the assessee, which came to Rs.41,064/-, for want of proper vouchers. Further, 1/6<sup>th</sup> of depreciation claimed on car, repair & Maintenance of Car expenses, and telephone & Internet Charges, which came to Rs.1,84,414/- and Rs.48,685/- respectively, was

disallowed for the reason that personal use of the vehicles and telephone by the Directors and their family could not be ruled out.

21. During appeal, it was submitted that the assessee had kept all the vouchers in respect of canteen expenses, vehicle expenses and for telephone and internet. All the vehicles mentioned in the assessment order, it was contended were kept at the work site, Takoli. It was also contended that the family members of the directors did not reside at the place of work and therefore the additions had been wrongly made.

22. The Ld.CIT(Appeals) rejected the contentions of the assessee stating that no proper vouchers had been produced by the assessee of office maintenance and canteen expenses and further the business use of the vehicles and telephone had not been established and therefore personal use cannot be ruled out. He therefore upheld the disallowance made.

23. Before us, the Ld. counsel for assessee relied upon the contentions made before the CIT(Appeals) and further pleaded that the disallowance was excessive.

24. The Ld. DR relied upon the order of the CIT(Appeals).

25. We find merit in the contention of the Ld. counsel for assessee. All the vouchers relating to the canteen expenses were admittedly produced and verified by the Assessing Officer. No specific defect has been pointed out in the same.

The disallowance made, therefore, for want of "proper" vouchers, without pointing out the specific defect in the vouchers making them "improper", we hold, is entirely arbitrary and without any basis and, therefore, wholly unsustainable. Similarly, the disallowance of vehicle expenses including depreciation, repair & maintenance and telephone expenses on account of personal use is also, we find, without any basis. The assessee had contended that all vehicles were kept at the work site and no family member resided there and therefore no personal use could be attributed in such circumstances. Without controverting the factual submissions made by the assessee, the disallowance made attributing some personal usage to the vehicles, we find, is without any basis, adhoc and totally unsustainable. The assessee has admittedly maintained complete Books of Accounts and the same have been verified also by the AO as is evident from the assessment order where the AO has stated so at para 2. Without pointing out any instance of personal use of vehicle, and telephone and without controverting the factual submissions of the assessee, the disallowance, we hold is unsustainable and is, therefore, directed to be deleted.

Ground of appeal No.4 raised by the assessee is therefore allowed.

26. Ground No.5 raised by the assessee reads as under:

5. *That the Ld. Commissioner of Income Tax (Appeals) has wrongly confirmed the addition of Rs.55244;- on a/c of payment of interest on TDS which is likely to be deleted."*

27. The above ground was not pressed before us by the assessee and the same is dismissed as not pressed.

28. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the Open Court.

Sd/-  
**(SANJAY GARG)**  
**JUDICIAL MEMBER**

Dated : 26<sup>th</sup> July, 2018

\*Rati\*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A)
4. The CIT
5. The DR

Sd/-  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**

Assistant Registrar,  
ITAT, Chandigarh