

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH

**Before: Shri Rajpal Yadav, Judicial Member
And Shri Amarjit Singh, Accountant Member**

**ITA No. 2564/Ahd/2014
Assessment Year 2011-12**

M/s. Ramdev Profiles, At & PO Tajpur (Oran), Taluka Prantij, Dist: Sabarkantha-383205, PAN: AAJFR7443R (Appellant)	Vs	The ITO, S.K.Ward-2, Himatnagar-383001 (Respondent)
--	----	---

**ITA No. 2612/Ahd/2014
Assessment Year 2011-12**

The ITO, S.K.Ward-2, Himatnagar-383001 (Appellant)	Vs	M/s. Ramdev Profiles, At & PO Tajpur (Oran), Taluka Prantij, Dist: Sabarkantha-383205, PAN: AAJFR7443R (Respondent)
--	----	---

**Revenue by: Shri Mudit Nagpal, Sr. D.R.
Assessee by: Shri Parimal Parmar, A.R.**

Date of hearing : 01-11-2018
Date of pronouncement : 29-11-2018

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

These two appeals filed by assessee and revenue for A.Y. 2011-12, arise from order of the CIT(A)-VIII, Ahmedabad dated 14-07-2014, in proceedings under section 143(3) of the Income Tax Act, 1961; in short the Act+

2. The solitary ground of appeal of the assessee is against the disallowance of Rs. 3,73,455/- u/s. 40A(3) of the act in respect of light bill paid in cash to Uttar Gujarat Viz Company Ltd.

3. The fact in brief is that during the course of assessment proceedings u/s. 143(3) of the act for the year under consideration, the assessing officer has made light bill payment of Rs. 3,73,455/- in cash. Consequently the assessing officer has disallowed the said payment in contravention of the provision of section 40A(3) of the act and added to the total income of the assessee.

4. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has sustained the disallowance holding that payment in cash was not covered in any of the exceptions provided in rule 6DD of the IT Rule.

5. During the course of appellate proceedings before us, the Id. counsel has contended that CIT(A) is not justified in confirming the disallowance of payment of electricity bill to Uttar Gujarat Viz Company Ltd. He has also placed reliance on the decision of the Co-ordinate Bench of identical issue and identical fact in the case of M/s. Shiv Krupa Tin Contractors vs. ITO ITA No. 136/Ahd/2016 order dated 09-06-2016. On the other hand, the Id. departmental representative has supported the order of Id. CIT(A).

6. We have heard both the sides and perused the material on record carefully. The assessee has made light bill payment of Rs. 3,73,455/- in cash to Uttar Gujarat Viz. Company Ltd as the assessee firm was situated in small village Oram which was not served by bank. This undisputed fact that assessee firm was situated in small village Oram not served by bank not disproved by the revenue. In this connection, we have perused the decision of Co-ordinate Bench of ITAT Ahmedabad the case of M/s. Shiv Krupa Tin Contractors vs. ITO ITA No. 136/Ahd/2016. Relevant part of the decision of Co-ordinate Bench the case of

M/s. Shiv Krupa Tin Contractors vs. ITO ITA No. 136/Ahd/2016 is reproduced as under:-

“3. Before us, Id.AR reiterated the submissions made before the AO and Id.CIT(A) and further submitted that the AO has not disputed that the payments made by the assessee is not for the purpose of business. He further submitted that the payment was made to Electricity Company in cash as there was no facility made by them to accept the payment in cheque or draft. He further submitted that the primary object of enacting section 40A(3) of the Act was to put a check on trading transactions to avoid the liability to tax on income earned on such transactions. The Id.AR submitted that while upholding the disallowance u/s.40A(3), there is no finding of Id.CIT(A) that as to whether each payment in a day made by the assessee exceeded Rs.20,000/-. He further submitted that provisions of section 40A(3) was intended with the objective of avoiding tax evasion. He submitted that when the payments are genuine and are made out of income from disclosed sources, no disallowance u/s.40A(3) can be made. He further placed reliance on the judgement of Hon'ble Gujarat High Court in the case of Anupam Tele Services vs. ITO reported at (2014) 366 ITR 122 (Guj.). He also placed reliance on the decision of Hon'ble Allahabad High Court in the case of CIT vs. Choudhary and Co. reported at (1996) 216 ITR (All). Ld.Sr.DR, on the other hand, supported the orders of the AO and Id.CIT(A).

4. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. The issue in the present ground is with respect to disallowance u/s.40A(3) of the Act. It is an undisputed fact that assessee has made cash payments for expenses and these payments have been made to Electricity Company for the supply of Electricity. The payment of Electricity was the purpose of business, the payee to whom the assessee has made the payment has not been doubted by the AO; meaning thereby that the genuineness of payment and identity of the payee are not in doubt. In such a situation, we find that the Hon'ble Jurisdictional High Court in the case of Anupam Tele Services vs. ITO reported at (2014) 366 ITR 122 (Guj.) has held that the paramount consideration of section 40A(3) is to curb and reduce the possibilities of black money transactions and section does not eliminate considerations of business expediencies. Before us, Revenue has not placed any contrary binding decision. In view of the aforesaid facts and after placing reliance on the aforesaid decision of Hon'ble Gujarat High Court, we are of the view that in the present case the expenditure cannot be disallowed. Thus, this ground of assessee is allowed.

Respectfully following the decision of the coordinate bench and considering the undisputed fact that no banking facility was available at the location of the assessee, we are not inclined with the finding of Id. CIT(A), therefore, the appeal of the assessee on this issue is allowed.

7. The other two grounds of appeal pertaining to levying of interest u/s. 234A, B and C of the act is mandatory as per rule and the other grounds of appeal for initiation of penalty u/s. 271(1)(c) of the act is premature at this stage, therefore, the same are dismissed.

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

ITA No. 2612/Ahd/2014 filed by revenue

9. The grievance of the Revenue is that the Id. CIT(A) has erred in deleting addition of Rs. 37,35,300/- as unexplained cash credit u/s. 68 of the act.

10. At the outset, after going through the grounds of appeal and the impugned orders of the Revenue authorities below, a query was raised by the Bench as to applicability and maintainability of the appeal filed by the Revenue in view of recent CBDT Circular No.3/2018 dated 11.7.2018 restricting the filing of the appeal by the Revenue where the tax effect is below Rs.20 lakhs, the Id. DR did not dispute the same and submitted that the issue is left to the Tribunal to be decided in accordance with law.

11. We find that the appeal of the Revenue is presented on 23.9.2014. On 11.7.2018 the CBDT has issued Instructions bearing No. 3 of 2018 under file No.F.No.279/Misc.142/2007-ITJ(Pt) prohibiting its subordinate authorities from filing of the appeal to the Tribunal against the order of the CIT(A) where the tax effect by virtue of the relief given by the CIT(A) is less than Rs.20 lakhs. The instructions have been made applicable with retrospective effect, meaning thereby, these instructions are applicable on pending appeals also. In the present case, tax effect on the total income assessed minus the tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issue against which appeal is filed, is less than Rs.20 lakhs. Further, the case of the Revenue does not fall within the ambit of exceptions provided in the Circular. Thus, keeping in view the above CBDT circular and provisions of section 268A of the Income Tax Act, we are of the view

that the present appeal of the Revenue deserves to be dismissed. It is accordingly dismissed.

However, it is observed that in case on re-verification at the end of the AO it comes to the notice that the tax effect is more or Revenue's case falls within the ambit of exceptions provided in the Circular, then the Department will be at liberty to approach the Tribunal for recall of this order. Such application should be filed within the time period prescribed in the Act. In view of the above, the appeal of the Revenue is dismissed due to low tax effect.

12. In the result, the appeal of the Revenue is dismissed.

13. In the combined result, the appeal of the assessee is partly allowed and appeal of the revenue is dismissed.

Order pronounced in the open court on 29 -11-2018

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER
Ahmedabad : Dated 29/11/2018

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश का प्रतिलिपि अप्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपील अाधिकरण,
अहमदाबाद