

*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "SMC" KOLKATA*

Before **Shri S.S, Godara, Judicial Member**

ITA No.876-877/Kol/2018 Assessment Years:2013-14 & 2014-15

Razi Ahmed 153 Park Street, Kolkata-17 [PAN No.ADCPA 3713]	<u>बनाम /</u> <u>V/s.</u>	Income Tax Officer Ward-32(4), 10, Middleton Row, 2 nd Floor,Kolkata-71
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

आवेदक की ओर से/By Assessee	Shri Prem Narayn Khandwal, CA
राजस्व की ओर से/By Respondent	Shri Radheshyam, CIT-DR
सुनवाई की तारीख/Date of Hearing	31-12-2018
घोषणा की तारीख/Date of Pronouncement	31-12-2018

आदेश /O R D E R

These two assessee's appeals for assessment years 2013-14 & 2014-15 arise from the Commissioner of Income-tax (Appeals)-9, Kolkata's separate orders; both dated 08.02.2018 passed in case No.341/CIT(A)-9/Wd-32(4)/2015-16/Kol & 128/CIT(A)-9/Wd-32(4)/2017-18/Kol affirming Assessing Officer's identical action invoking u/s 40A(3) disallowance(s) / adding cash payments amounting to ₹6,43,530/- and ₹2,81,100/- as well as back interest of ₹3,546/- in former assessment year; respectively involving proceedings u/s. 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file(s) perused.

2. I notice at the outset that assessee's former substantive identical ground in both these appeals challenges correctness of lower authorities' action invoking sec.40A(3) disallowance (supra) in respect of its cash payments utilized in business purchases. There is no dispute about this assessee to have engaged in sale of plastic & chappals.

There is further no quarrel about the assessee having made the impugned cash payments or genuineness thereof. The sole issue before me is that the said payments attracts sec.40A(3) or not. The Revenue's vehement contention before me is that the taxpayer had made payments both in cash as well as in cheque and only the former component has been disallowed in both lower appellate proceedings. It fails to dispute the basic fact that the assessee has in fact purchased rubber from unorganized rural market in cash only whose genuineness has not been called into question in either of the lower proceedings. Hon'ble Gujarat high court's judgment in Anupal Telle Services vs. ITO (2014) 366 ITR 122 (Guj) holds that the specific instances prescribed in Rule 6DD of the IT Rules, 1962 are not to be read in a restrictive sense. Hon'ble jurisdictional high court in CIT vs. Crescent Export Syndicate in ITA No.202 of 2008 decided on 30.07.2008 also concludes that sec. 40A(3) is not attracted when genuineness of the payment in issue is not called into question as follows:-

"The learned Counsel appearing for the appellant argued that the assessee is 100% export oriented firm, exporting leather goods viz. Wallets and different types of bags. The total export turnover during the year (FOB value) Rs.19,51,73,720/- and purchases shown at Rs.11,65,97,523/-. Out of the said purchase, the purchase from IS parties amounting to Rs.83,44,822/- and the seller could not be produced in assessment, hence the A.O. disallowed the entire purchase and added Rs.83,44,822/-. In appeal, before the Id. CIT(A)-XIX, Kolkata the appellant submitted that it maintains stock book inventorised the purchase of leather, leather issued for cutting, and issued to fabricator finally for finishing the goods as per export order. The Id. CIT(A) directed the A.O to examine those books and to submit the remand report. In the remand report the A.O. has admitted 'on verification of the purchase details, it is seen that the purchases amounting to Rs.83,44,822/- made from different parties are entered in the stock register and put to the various stages of manufacturing process. The assessee also produced bills in respect of all purchase made from these IS parties and finally the Id. CIT(A) has held 'as regards the purchase, it is seen that these were recorded in the stock register, their consumption is also recorded therein, up to the stage of final production. All these records are audited. They are produced before the Assessing Officer for examination who had not been able to point out any defect in it. Under the circumstances the purchases are considered to be genuine'. So the purchases have been held to be genuine. It also appears that the purchases have been held to be genuine by the learned CIT (Appeal) but the learned CIT(Appeal) has invoked Section 40A(3) for payment exceeding Rs.20,000/- since it is not made by crossed cheque or bank draft but by bearer cheques and has computed the payments falling under provisions to Section 40A(3) for Rs.78,45,580/- and disallowed @ 20% thereon Rs.15,69, 116/-. It is also made clear that without the payment being made by bearer cheque these goods could not have been procured and it would have hampered the supply of goods within the stipulated time. Therefore, the genuineness of the purchase has been accepted by the Id. CIT (Appeal) which has also not been disputed by the department as it appears from the order so passed by the learned Tribunal. It

further appears from the assessment order that neither the Assessing Officer nor the CIT (Appeal) has disbelieved the genuineness of the transaction. There was no dispute that the purchases were genuine.

Accordingly, in our opinion, the learned Tribunal has correctly come to the conclusion by deleting the addition of Rs.15,69,116/- under section 40A(3) of the Act. On the other ground as it appears that the CIT (Appeal) has been directed to reconsider the matter. In view of that we do not think that any substantial question of law is involved in this matter. Hence the appeal being ITA NO. 202 of 2008 is dismissed.”

I adopt the above detailed reasoning mutatis mutandis to reject Revenue's arguments in both assessment years support the lower authorities' action invoking the impugned disallowance(s).

3. The assessee's former substantive ground in its appeal ITA No.876/Kol/2018 as well as sole substantive grievance in ITA No.877/Kol/2018 is accepted.

4. No. argument has been raised before me regarding assessee's bank interest ground (supra) in former assessment year. Assessee's former appeal ITA No.877/Kol/2018 is partly allowed in above terms and latter appeal ITA No.877/Kol/2018 is allowed. Ordered accordingly.

Order pronounced in the court of the hearing on 31st day of Monday, December, 2018

Sd/-
(S.S. Godara)
Judicial Member

Kolkata,
*Dkp/Sr.PS

दिनांक:- 31/31/2018 कोलकाता

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

1. आवेदक/Assessee-Razi Ahmed, 153, Park Street, Kolkata-017
2. राजस्व /Revenue-ITO Ward-32(4)/ 10, Middleton Row, 2nd Floor, Kolkata-71
3. संबंधित आयकर आयुक्त / Concerned CIT 4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।