

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES (SMC), JAIPUR

श्री रमेश सी शर्मा, लेखा सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 244/JP/2018
निर्धारण वर्ष / Assessment Year: 2013-14

Sandeep Manju, C/o- Choudhary Hotel, Gandhi Chowk, Jhunjhunu-333001	बनाम Vs.	I.T.O., Ward-(1), Jhunjhunu (Raj.)
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AJZPM 2776 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)
राजस्व की ओर से / Revenue by : Ms. Anuradha (JCIT)

सुनवाई की तारीख / Date of Hearing : 18/03/2019
उदघोषणा की तारीख / Date of Pronouncement : 10/04/2019

आदेश / ORDER

PER: R.C. SHARMA, A.M.

This is an appeal filed by the assessee against the order of Id.CIT(A)-3, Jaipur dated 15/12/2017 for the A.Y. 2013-14 in the matter of order passed U/s 143(3) of the Income Tax Act, 1961 (in short the Act).

2. The main grievance of the assessee in this appeal relate to disallowance of Rs. 19,62,500/- made by the A.O. U/s 40A(3) of the Act in respect of cash payment made for purchase of land.

3. Rival contentions have been heard and record perused. Facts in brief are that the assessee is engaged in the business of purchase and sale of agriculture lands and residential & commercial plots. During the year under consideration he purchased agricultural lands in cash exceeding Rs.20,000/- amounting to Rs.19,62,500/-. The AO therefore disallowed the same by invoking provisions of section 40A(3) of the Act. By the impugned order, the Id. CIT(A) confirmed the disallowance by observing that the assessee failed to file any case which is covered under Rule 6DD of IT Rules. Therefore, following the decision of Hon'ble 1TAT Jaipur Bench in case of Vaishali Builders & Colonisers Vs. Addl. CIT and Hon'ble Punjab & Haryana High Court in case of Agarwal Steel Traders Vs. CIT, the Id CIT(A) has confirmed the disallowance since no satisfactory explanation was given by the assessee for making cash payment of Rs.19,62,500/- in contravention of section 40A(3) of the Act. Against the order of the Id. CIT(A), the assessee is in further appeal before the ITAT.

4. It was argued by the Id AR of the assessee that the assessee has purchased only one agriculture land through 5 registered sale deeds. There are 14 khatedars involved in these transactions and it was not possible to deal and negotiate with each khatedar individually. Thus,

the dealing was done with their group leader. As the assessee and sellers were unknown to each other, the group leader insisted for payment in cash. Thus, the cash payment was made on the specific condition put by the seller. If the assessee had not made the payment in cash, he would not get the deal in his favour and it would adversely affect the business activity. During this period the property market was in boom and the price of property was increasing day & night. Therefore, it was utmost necessity of the hour to make the payment in cash and to settle the deal otherwise the seller would have enhanced the sale price or might have dealt with another buyer. Hence, the payments were made in cash out of business expediency to safeguard its interest.

5. The Id AR further contended that in order to dilute the rigors of section 40A(3), Rule 6DD was brought in the statute from 01.04.1969. Clause (j) of this rule provides that where the AO is satisfied that due to exceptional or unavoidable circumstances, the payment could not be made by crossed cheque/. bank draft and the genuineness of payment and identity of the payee is furnished, section 40A(3) would not be attracted. However, this clause was omitted by Notification dt. 27.07.1995 and a new clause (j) was introduced from 01.12.1995

which was also substituted by Notification dt. 10.10.2008 w.e.f. 01.04.2008. With reference to the amended rule 6DD, various tribunals have held that invoking the provisions of section 40A(3) can be dispensed with if the assessee is able to prove the business expediency because of which it has to make cash payments and the genuineness of the transaction is verified.

6. On the other hand, the Id DR has contended that it was clear violation of Section 40A(3) of the Act and the assessee could not produce any evidence on record to suggest that his case was covered by any of the clauses provided under Rule 6DD of the IT Rules, accordingly, the A.O. was justified in disallowing the cash payment made in excess of Rs. 20,000/- in terms of provisions of Section 40A(3) of the Act.

7. We have considered the rival contentions and carefully gone through the orders of the authorities below. The main plea of the Id. AR was that 14 khatedars were involved in these transactions, therefore, payment was made through a group leader who was agent of other 14 khatedars, therefore, covered by Clause (K) of Rule 6DD of the IT Rules where the payment is made by any person who is agent who is required to make payment in cash for goods or services on

behalf of such person then no disallowance can be made U/s 40A(3) of the Act. In the substantial interest of justice, we restore the matter back to the file of the A.O. for deciding the issue afresh and find out if the assessee is covered by Clause (K) of Rule 6DD of the IT Rules. The assessee is at liberty to place on record any new evidence to substantiate its case is covered by any of the clauses provides under Rule 6DD of the IT Rules. I direct accordingly.

8. In the result, appeal of the assessee is allowed for statistical purposes in terms indicated hereinabove.

Order pronounced in the open court on 10th April, 2019

Sd/-
(रमेश सी शर्मा)
(RAMESH C SHARMA)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 10th April, 2019

*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Sandeep Manju, Jhnujhunu.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward-(1), Jhunjhunu.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 244/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar