IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH : KOLKATA

[Before Hon'ble Shri J. Sudhakar Reddy., AM & Hon'ble Shri S.S. Godara, JM]

I.T. A No. 14/Kol/2018 A.Y 2013-14

Haridas Som PAN: AJHPS8867K (Appellant)	V/s.	I.T.O. Ward 22(3), Kolkata (Respondent)

For the Appellant	:	Shri G.Banerjee, Adovate, ld.AR
For the Respondent	:	Shri Sankar Halder, JCIT, ld.Sr.DR

Date of Hearing : 21-06-2019
Date of Pronouncement : 13 -09-2019

ORDER

Shri S.S. Godara, JM:

1. This Assessee's appeal for assessment year 2013-14 arises against the CIT(A), 6, Kolkata's order dated 03-11-2017 passed in case no. CIT(A), Kolkata-6/10107/16-17 involving proceedings u/s 143(3) of the Income-tax Act, 1961 (in short 'Act').

Heard both the parties. Case file perused.

2. The assessee's three folded substantive grounds raised in the instant appeal seeks to reverse both the lower authorities' action disallowing his cash payments of Rs. 49,43,544/- made to Royal Calcutta Turf Club (in short 'RCTC') u/s. 40A(3) of the Act. The CIT(A)'s detailed discussion under challenge to this effect reads as under:-

> *"4. Ground Nos. 2, 3 & 4 are on the same issue of disallowance of Rs.49,43,544/- u/s. 40A(3) of the Act on account of "Operational Charges" paid in cash. The facts of the case are that the appellant is an authorized Book Maker of Royal Calcutta Turf Club for 'Horse Racing' and he is carrying on this business for the last two decades. However, he runs authorized business of Book Maker in form of two entities, MI s H.D. Som(A) & Co. and H.D. Som(B) & Co. The appellant is the proprietor of*

both the entities and maintains consolidated P&L AI c under his proprietorship.

4.1 During the year, the Ld. A.O. found that the appellant had paid Operational Charges to the tune of Rs.65,70,374/- to M/s Royal Calcutta Turf Club(RCTC) out of which cash amounting to Rs.49,43,544/- was paid in violation of section 40A(3). When confronted, the AIR argued that both the entities under the proprietorship business of the appellant are separate entities with separate agreements with RCTC and with separate staff. Thus, the clubbing of deposits made in cash on a single day for both the entities by the A.O. as he has done at Table-l of page 3,4 & 5 of the assessment order is incorrect and the case of the appellant is therefore, not covered u/s 40A(3). The A.O. at Para 4.6 of his order at Page No.6 refuted such a claim by stating as below:

"The audited accounts of the assessee for the Assessment Year 2012-13, 2013-14, 2014-15 and 2015-16 are verified. The clarification for the Ld. Of the assessee that separate accounts are maintained for both the accounts are not mentioned in any of the reports. No separate Profit & Loss A/c and Balance Sheet for H.D. SOM (A) and H.H. SOM (B) are being furnished in any of the reports. It is also relevant to be mentioned that a proprietor of a concern cannot deny the responsibility of the action of his employees and he cannot take the plea that he was unaware about the amount of cash deposited by his employees to RCTC which resulted in violation of section 40A(3) of the 1. T. Act, 1961."

The A.O. has also stated in his assessment order that section 40A(3) subsequent to amendment made in Finance Act, 2008 w.e.f. 0 1.04.2009 uses the word "aggregate of payments". Such an aggregate will include the cash deposited by both the entities of the proprietorship business of the appellant. The A.O. also stated that the audited accounts of the appellant also reflected the aggregate amounts of transactions made by the two entities. During the course of assessment proceedings, the appellant cited certain case laws but the A.O. did not take cognizance of such case laws as they pertained to section 40A(3) prior to the amendment made to this section by the Finance Act, 2008 w.e.f.01.04.2009. At Para 4.9 of his order, the A.O. further states that this case does not fall under any of the exception laid down in Rule 6DD of the I.T. Rules, 1962 nor has the appellant made any such claim. Accordingly, the A.O. made the addition of Rs.49, 43,544/-- for violation of section 40A(3) of the Act.

4.2 In the Statement of Facts, the appellant has argued as below:-

"In this context it is submitted in course of assessment proceedings u/s 143(3) that H.D. Som & Co. (A) and H.D. Som & Co.(B) are completely separate entity. Both the concerns have separate business activity with separate license and agreement with RCTC. Both the concerns maintain separate records and documents by the separate persons, having no connection among each other in daily activities. Persons depositing the cash to RCTC for H.D. Som. & Co. (A) does not know how much of money is being deposited by H.D. Some & Co. (B). Thus, for all practical purpose these two concerns have separate, independent legal entity. From the perusal of the deposition made by RCTC in response to your notice under 133(6) of 1. T. Act, it is evident that they have also maintained separate accounts (ledgers) for both the entity, in respect to transaction with the assessee. Moreover, RCTC issued separate documents (FMPL) to both the entities for payment of operational charges and other charges. Thus in a particular day the payments of 'operational charge' by H.D. Som & Co. (A) and H.D. Som & Co. (B) are independent transactions. Thus, the assessee 'operational charge' paid for by H.D. Som & Co. (A) and H.D. Som & Co. (B) are separate expenditure. The section 40A(3) of the Income Tax Act, 1961 provides "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 bank or account payee demand draft exceeds twenty thousand rupees, no deduction shall be allowed in respect of such expenditure". Since during the year under scrutiny, no single expense on account of operational charge exceeded Rs.20,000/ -, provision u/ s 40{a(3) of the Act should not be invoked. Thus relief of Rs.49,43,,544/ - is sought."

4.3 During the appellate proceedings, the AIR of the appellant in his written submission also argued as below.-

"2.3 The assessee is appointed a license book-maker by RCTC to carry on betting by sale of tickets for house-racing to public, where otherwise would have been done by RCTC directly. There is a relationship of principal and agent in the licensee book-making activities of the assessee. The assessee as book-maker, acts as licensee of RCTC and as agent of RCTC. Thus when assessee pays the operational charge to RCTC, the same becomes payment by an agent to principal, where payment is required to be made by cash. In this view of the matter, the payments are covered by exception provided under Rule 6DD(k).

2.4 During the working hours of a day, the assessee being a book maker, remains busy in selling tickets to customers, paying prize money and retaining the balance. After end of race which generally ends at around 4.30 - 5.00 p.m. depending on location, the public activities of the assessee ends. Thereafter the assessee prepares his accounts, tallies his cash sales and payments and arranges the closing cash in hand. Out of this cash balance, the deposits the processing fees to RCTC on a daily basis. By the time the cash is ready for delivery to RCTC, the banks close their operation. This happens on all normal working days, including Saturdays. On Sundays and holidays the bank no not open and thus the assessee can exigency , terms and condition requires the assessee to make payment of operational charges by cash to RCTC. The Rule 6DD(j) specifically provides that payment shall not be treated as disallowed u/ s 40A(3), in case such payments are made on a day on which banking operation is not available. The payments made by the assessee are made at a time and on a day, when banking services are not available. Thus, the assessee is fully entitled to the benefits of the rule and payments identified to be made on Saturdays (after banking hours, which was 12.30 p.m. during the relevant period), Sundays or Holidays should be exempt from disallowance made u/ s 40A(3). List of payments made on Saturdays, Sundays and holidays during the year is given below, which shows that payments made in aggregate for F. Y. 2012-13 works out to Rs.2861838.

	A	*A*	*B*	*B*	*Total*
Sunday	*733142*	*115465*	*729758*	*113876*	*1692241*
Saturday	*478817*	*-*	*472234*	*15169*	*966220*
Holiday	*100284*	*-*	*103093*	*-*	*203377*
Total	*1312243115465*	*115465*	*1305085*	*129045*	*2861838*

3. Reliance is placed on the following citations:

119 ITD 62(Kol) (TM) Shanta Ram Mehta
Meaning of in a sum in S. 40A(3) - provisions refers to single payment & not aggregate of payments, irrespective of any number of payments where the amount does· not exceed the limit, the rigour of S. 40A(3) will not apply.

366 ITR122(Guj.) Anupan Tele Services v ITI

A. Y. 2006-07 - S. 40A(3) must be read with Rule 6DD - Payment in cash at the request of payee - Transaction genuine - Reasonable explanations for payment in cash - payments could not be disallowed.

4.4 During the appellate proceedings, Remand Report was called for from the A.O. and such report dt.Ol.08.2017 was received in this office. As far as addition of Rs.49,43,544/- u/s. 40A(3) of the Act is concerned, the A.O. stated that all the issues raised by the appellant have been duly considered in the course of assessment and he thereby endorsed the addition made by the A.O. u/ s 40A(3). A copy of the remand report was provided to the appellant through a notice dt.04.08.2017. In response, the Ld. A/R repeated his argument as made in his written submission earlier. He further filed a certification from RCTC which in nut shell states that during the F.Y. 2012-13 the Club had been accepting Operation Charges from Book Maker in cash. This certificate is as below:'

"This is to certify that as per the general practice the Bookmakers who were associated with us during the Financial Year 2012-13 deposited operational charges payable to us by cash and the payment had to be made within one hour before the commencement of the next race day. In absence of the payment of the operational charges of the preceding race day, the Bookmakers will not be allowed to operate their business on that particular race day. All the Bookmakers including M/ s H.D. Some & Co. (A&B) deposited operational charges by cash only.

This practice has been changed from cash payment to cheque/DD payment effective from Financial Year 2015-16."

4.5 I have examined the assessment order, remand report as well as other documents submitted by the A/ R of the appellant. I am not in agreement with the view of the AIR of the appellant. The first argument taken by the A/R of the appellant is that there were two entities under the proprietorship business of the appellant and for the purpose u] s 40A(3), the cash deposited by the two entities cannot be clubbed together. Such an argument has been duly considered by the A.O. in his assessment order. The A.O. has pointed out that section 40A(3) has been amended by the Finance Act, 2008 w.e.f. 01.04.2009 to include the term "agreement of payments". It is also on record 01.04. 2009 to include the term "agreement of payments". It is also on record that both the 'entities are doing same business and controlled by the same proprietor who is the

appellant and the audited report does not distinguish between the two entities. Hence, the argument of separate entities falls flat. Another argument taken by the appellant is that Saturdays, Sundays and Holidays should fall under the exception as provided in Rule 6DD(j). The appellant has also quoted certain case laws in his favour. It is not understood as to why in a metropolitan city like Kolkata where banking facility is widely available, Rule 6DDU) can at all be invoked when the appellant would have easily issued cheque from his bankers. In short, there existed, there no compelling circumstances for the assessee to make payment in cash alone of a banking holiday when cheque payments could have been easily made. In the case of ***Jai Talkies v. ITO(ITAT, Del.) 57 TTJ 745*** *it has been held that making payment on bank holiday do not ipso facto permit the assessee to make cash payment. I am of the view that there existed no special circumstance where the appellant was compelled to make cash payment and cash alone to the exclusion of draft or a cheque. The appellant has also taken shelter in certificate issued by RCTC that during the Financial Year 2012-13 there were receiving operational charges from the Book Maker in cash. This certificate, I am of the view, is only self-serving the certificate. The internal regulation of any club will not have any overriding bearing on the provisions of the Income Tax Act which is legislated by the Parliament of India. In the case of* ***Narayan Bijoy Kumar v. CIT(Patna) 163 ITR 895****, the Hon'ble Patna High Court considered the certificate given to the assessee by another party insisting for cash payments. The hon'ble High Court considered this certificate and did not find it sufficient cause necessitating cash payment. Accordingly, I do not find certificate issued by RCTC to the appellant as a sufficient cause which necessitated the appellant to make cash payment. In view of my discussion and case laws relied upon, I uphold the addition of Rs.49,43,544/- made by the A.O. u/s 40A(3) and dismiss Ground Nos. 2,3 & 4 of the appellant."*

3. The assessee's case as per his grounds raised in the instant appeal is that Assessing Officer as well as CIT(A) both have erred in invoking/adding the impugned disallowance of cash payment u/s. 40A(3) of the Act. He has filed a detailed paper book comprising of written submissions filed before the CIT(A), Book makers agreement dt. 07-08-2013, Notice to Bookmakers dt. 16-05-2011, Assessing Officer's remand report dt. 01-08-2017, donation receipts dt. 18-12-2012 & 22-12-2012, renewal of bookmakers

license dt. 18-05-2012,RCTC's Certificates dt. 31-03-2013/06.09.2017; respectively alongwith catena of case laws to be discussed in the succeeding paras of this order.

4. Learned Departmental Representative supports both the lower authorities' action that assessee's impugned cash payments made to said club deserves to be disallowed u/s. 40A(3) of the Act. He re-emphasises that assessee could not prove his separate books of account of the two arms (supra) right from scrutiny to the remand direction as well as lower appellate proceedings.

5. We find no merit in Revenue's above stated arguments. There is no dispute about assessee's carrying on licensed bookmaker's business with RCTC and therefore, he made the impugned cash payment to the said club only as ' operational charges' has nowhere been doubted. The said operational charge relate to setting on horse racing conducted in the club on Saturdays/Sundays/Holidays only. Page-21 of the paper book is assessee's agreement with the club. The same suggest that the bookmakers have to pay operational charges in relation to previous day(s) horse racing next day & prior to commencement of the day(s) rates. Learned Departmental Representative fails to dispute that non compliance of this agreement clauses attracts appropriate action against book makers. It therefore emerges that all these clinching agreement's conditions only made the assessee to pay operational charges to the club in cash at the earliest in order to avoid appropriate actions.

6. This tribunal 's co-ordinate bench's decision in ITA No. 1448/Kol/2011 A/y 2008-09 Sri Manoranjan Raha v/s. ITO decided on 18-11-2015 holds that impugned disallowance provision does not apply in case of overwhelming genuine payments coupled with business exigencies which may go beyond the prescribed rule 6DD of the Income Tax Rules, 1962 as follows:-

3. The only issue to be decided in this appeal is as to whether the disallowance u/s 40A(3) of the Act could be made in the facts and circumstances of the case amounting to Rs. 1,14,52,363/- (60,50,890 + 54,01,473).

4. The brief facts of this case is that the assessee is a distributor of Hutch Sim Cards and derives income from trading of wholesale and retail sale of mobile sets and top up charges apart from distribution commission for sim cards under the name and style of 'Shibani Hutch Communication', a proprietary concern. The assessee had also shown interest income on fixed deposits and Kisan Vikas Patras. The books of account were not produced by the assessee before the Learned AO inspite of several opportunities provided to him. The asssessee had entered into an Associated Distributor Agreement with Shri.Amit Dutta who is the distributor of Hutch sim cards had appointed assessee as the Associate Distributor. Pursuant to this agreement, the assesee would purchase sim cards from Shri.Amit Dutta and sell the same to customers and assesee would derive distributor commission at an agreed rate. The Learned AO during the course of assessment proceedings found that there is a violation of section 40A(3) of the Act in respect of payments made by the assessee to the main distributor of Hutch Sim Cards Mr.Amit Dutta. The Learned AO obtained information u/s 133(6) of the Act from Mr.Amit Dutta and obtained the ledger account of the assessee as appearing in the books of Mr.Amit Dutta. The Learned AO observed that the assessee had made total purchases from Mr.Amit Dutta to the tune of Rs. 1,51,94,459/- and made cash payments exceeding Rs 20,000/-- in a day in violation of section 40A(3) of the Act to the tune of Rs. 60,50,890/- during the Asst Year under appeal. A show cause notice dated 20.8.2010 was issued by the Learned AO to the assessee in this regard. Detailed submissions were made before the Learned AO by the assessee on 19.10.2010 explaining the facts and the legal stand taken by the assessee on the impugned issue. Sri Amit Dutta had also deposed before the Learned AO u/s 131 of the Act confirming the receipt of monies in cash from the assessee and further stated that he Shri Manorajan Raha had persuaded the assessee to pay only in account payee cheques to get away from the rigours of section 40A(3) of the Act , but the assessee continued to make certain payments in violation of section 40A(3) of the Act. The Learned AO relying on all these facts sought to disallow a sum of Rs. 60,50,890/- u/s 40A(3) of the Act.

4.1. On first appeal, the Learned CITA upheld the addition of Rs. 60,50,890/- made by the Learned AO and further sought to disallow another sum of Rs. 54,01,473/- towards cash payments made for purchases thereby enhancing the assessment by Rs. 54,01,473/- Aggrieved, the assessee is in appeal before

us by raising the several grounds. Though the assessee had raised several grounds in his appeal, the central ground revolves only around disallowance u/s 40A(3) of the Act. Hence all the grounds are taken up together for the purpose of adjudication herein.

4.2. The Learned AR reiterated the facts stated before the lower authorities. He argued that the genuineness of the cash payments made by the assessee is not disputed by the revenue and hence no disallowance u/s 40A(3) of the Act could be made. He argued that the assessee has made payment to his agent Mr.Amit Dutta and hence payments would fall under the exception provided in Rule 6DD(k) of the IT Rules. In response to this, the Learned DR vehemently supported the orders of the lower authorities.

4.3. We have heard the rival submissions and perused the materials available on record. We find that the payments made by cash in violation of section 40A(3) of the Act have been duly acknowledged by the recipient Shri.Amit Dutta who had deposed before the learned AO and confirmed the fact of receipt of monies in cash. Hence the genuinity of payments made by the assessee stands clearly established beyond doubt. Even for the amounts enhanced by Learned CITA in the sum of Rs. 54,01,473/-, the genuineness of the payments and the necessity to incur the said expenditure for the purpose of business of the assessee was never disputed by the Shri Manorajan Raha Learned CITA. We hold that since the genuinity of the payments made to the parties is not doubted by the revenue, the provisions of section 40A(3) could not be made applicable to the facts of the instant case. It will be pertinent to go into the intention behind introduction of provisions of section 40A(3) of the Act at this juncture. We find that the said provision was inserted by Finance Act 1968 with the object of curbing expenditure in cash and to counter tax evasion. The CBDT Circular No. 6P dated 6.7.1968 reiterates this view that "this provision is designed to counter evasion of a tax through claims for expenditure shown to have been incurred in cash with a view to frustrating proper investigation by the department as to the identity of the payee and reasonableness of the payment."

4.4. In this regard, it is pertinent to get into the following decisions on the impugned subject:-

Attar Singh Gurmukh Singh vs ITO reported in (1991) 191 ITR 667 (SC) "Section 40A(3) of the Income-tax Act, 1961, which provides that expenditure in excess of Rs.2,500 (Rs.10,000 after the 1987 amendment) would be allowed to be deducted only if made by a crossed cheque or crossed bank draft (except in specified cases) is not arbitrary and does not amount to a

restriction on the fundamental right to carry on business. If read together with Rule 6DD of the Income-tax Rules, 1962, it will be clear that the provisions are not intended to restrict business activities.

There is no restriction on the assessee in his trading activities. Section 40A(3) only empowers the Assessing Officer to disallow the deduction claimed as expenditure in respect of which payment is not made by crossed cheque or crossed bank draft. The payment by crossed cheque or crossed bank draft is insisted upon to enable the assessing authority to ascertain whether the payment was genuine or whether it was out of income from undisclosed sources. The terms of section 40A(3) are not absolute. Consideration of business expediency and other relevant factors are not excluded. Genuine and bona fide transactions are not taken out of the sweep of the section. It is open to the assessee to furnish to the satisfaction of the Assessing officer the circumstances under which the payment in the manner prescribed in section 40A(3) was not practicable Shri Manorajan Raha or would have caused genuine difficulty to the payee. It is also open to the assessee to identify the person who has received the cash payment. Rule 6DD provides that an assessee can be exempted from the requirement of payment by a crossed cheque or crossed bank draft in the circumstances specified under the rule. It will be clear from the provisions of section 40A(3) and rule 6DD that they are intended to regulate business transactions and to prevent the use of unaccounted money or reduce the chances to use black money for business transactions."

CIT vs CPL Tannery reported in (2009) 318 ITR 179 (Cal) The second contention of the assessee that owing to business expediency, obligation and exigency, the assessee had to make cash payment for purchase of goods so essential for carrying on of his business, was also not disputed by the AO. The genuinity of transactions, rate of gross profit or the fact that the bonafide of the assessee that payments are made to producers of hides and skin are also neither doubted nor disputed by the AO. On the basis of these facts it is not justified on the part of the AO to disallow 20% of the payments made u/s 40A(3) in the process of assessment. We, therefore, delete the addition of Rs. 17,90,571/- and ground no.1 is decided in favour of the assessee.

CIT vs Crescent Export Syndicate in ITA No. 202 of 2008 dated 30.7.2008 - Jurisdictional High Court decision "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 hearer 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 ld. 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."

Anupam Tele Services vs ITO in (2014) 43 taxmann.com 199 (Guj) Shri Manorajan Raha "Section 40A(3) of the Income-tax Act, 1961, read with rule 6DD of the Income-tax Rules, 1962 - Business disallowance - Cash payment exceeding prescribed limits (Rule 6DD(j)-Assessment year 2006-07 - Assessee was working as an agent of Tata Tele Services Limited for distributing mobile cards and recharge vouchers - Principal company Tata insisted that cheque payment from assessee's co-operative bank would not do, since realization took longer time and such payments should be made only in cash in their bank account - If assessee would not make cash payment and make cheque payments alone, it would have received recharge vouchers delayed by 4/5 days which would severely affect its business operation - Assessee, therefore, made cash payment - Whether in view of above, no disallowance under section 40A (3) was to be made in respect of payment made to principal - Held, yes [Paras 21 to 23] [in favour of the assesse]"

Sri Laxmi Satyanarayana Oil Mill vs CIT reported in (2014) 49 taxmann.com 363 (Andhrapradesh High Court) "Section 40A(3) of the Income-tax Act, 1961, read with Rule 6DD of the Income-tax Rules, 1962 - Business disallowance - Cash payment exceeding prescribed limit (Rule 6DD) - Assessee made certain payment of purchase of ground nut in cash exceeding prescribed limit - Assessee submitted that her made payment in cash because seller insisted on that and also gave incentives and discounts - Further, seller also issued certificate in support of this - Whether since assessee had placed proof of payment of consideration for its transaction to seller, and later admitted payment and there was no doubt about genuineness of payment, no disallowance could be made under section 40A(3) - Held, yes [Para 23] [In favour of the assessee]"

CIT vs Smt. Shelly Passi reported in (2013) 350 ITR 227 (P&H) In this case the court upheld the view of the tribunal in not applying section 40A(3) of the Act to the cash payments when ultimately, such amounts were deposited in the bank by the payee.

4.5. It is pertinent to note that the primary object of enacting section 40A(3) was two fold, firstly, putting a check on trading transactions with a mind to evade the liability to tax on income earned out of such transaction and, secondly, to Shri Manorajan Raha inculcate the banking habits amongst the business community. Apparently, this provision was directly related to curb the evasion of tax and inculcating the banking habits. Therefore, the consequence, which were to befall on account of non- observation of section 40A(3) must have nexus to the failure of such object. Therefore, the genuineness of the transactions it being free from vice of any device of evasion of tax is relevant consideration.

4.6. The Hon'ble Apex Court in the case of CTO vs Swastik Roadways reported in (2004) 3 SCC 640 had held that the consequences of non-compliance of Madhyapradesh Sales Tax Act , which were intended to check the evasion and avoidance of sales tax were significantly harsh. The court while upholding the constitutional validity negated the existence of a mens rea as a condition necessary for levy of penalty for non-compliance with such technical provisions required held that "in the consequence to follow there must be nexus between the consequence that befall for non-compliance with such provisions intended for preventing the tax evasion with the object of provision before the consequence can be inflicted upon the defaulter." The Supreme Court has opined that the existence of nexus between the tax evasion by the owner of the goods and the failure of C & F agent to furnish information required by the Commissioner is implicit in section 57(2) and the assessing authority concerned has to necessarily record a finding to this effect before levying penalty u/s. 57(2).

Though in the instant case, the issue involved is not with regard to the levy of penalty, but the requirement of law to be followed by the assessee was of as technical nature as was in the case of Swastik Roadways (3 SCC 640) and the consequence to fall for failure to observe such norms in the present case are much higher than which were prescribed under the Madhya Pradesh Sales Tax Act. Apparently, it is a relevant consideration for the assessing authority under the Income Tax Act that before invoking the provisions of section 40A(3) in the light of Shri Manorajan Raha Rule 6DD as clarified by the Circular of the CBDT that whether the failure on the part of the assessee in adhering to requirement of provisions of section 40A(3) has any such nexus which defeats the object of provision so as to invite such a consequence. We hold that the purpose of section 40A(3) is only preventive and to check evasion of tax and flow of unaccounted money or to check transactions which are not genuine and may be put as camouflage to evade tax by showing fictitious or false transactions. Admittedly, this is not the case in the facts of

the assessee herein. The payments made in cash to Shri. Amit Dutta had been duly acknowledged by him in an independent deposition given by him before the Learned AO which was admittedly taken behind the back of the assessee. It is also pertinent to note that the Hon'ble Rajasthan High Court in the case of Smt.Harshila Chordia vs ITO reported in (2008) 298 ITR 349 (Raj) had held that the exceptions contained in Rule 6DD of Income Tax Rules are not exhaustive and that the said rule must be interpreted liberally.

4.7. The assessee has also given the income tax assessment particulars of Amit Dutta before the Learned AO. Moreover, the Learned AO himself had taken deposition from Sri Amit Dutta u/s 131 of the Act wherein he had confirmed the receipt of monies in cash as well as by cheque / DD from the assessee. Hence the acknowledgement of the payments made by the assessee by the payee is proved beyond doubt. The assessee had also stated that the payee had duly included these payments as his receipts in his returns."

We adopt the above extracted detailed reasoning *mutatis mutandis* to delete the impugned section 40A(3) disallowance of Rs. 49,43,544/-.

7. This assessee's appeal is allowed.

Order pronounced in the Court on 13 -09-2019

Sd/- Sd/-

[J. Sudhakar Reddy] [S.S.Godara]
Accountant Member Judicial Member

Dated :13 -09-2019
**PRADIP, Sr. PS
Copy of the order forwarded to:
1. Appellant/Assessee: Haridas Som 42/1 Ghoshpara Lane, Bhadrakali, Hooghly-712232.
2. Respondent/Department: I.T.O., Ward 22(3), Kolkata 54/1 Rafi Ahmed Kidwai Road, Kolkata-16.
3..C.I.T(A).- 4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy By Order

Assistant Registrar
H.O.O/D.D.O Kolkata