

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**

BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER

ITA No.8153/Del/2018
Assessment Year: 2015-16

Global Connect Travels P. Ltd. 403-404, Sagar Tower, District Centre, Janak Puri, New Delhi-110058 PAN No. AAFCG2562F (APPELLANT)	Vs	ITO Ward – 10 (2) New Delhi (RESPONDENT)
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Appellant by	Sh. Naveen Singh, CA
Respondent by	Sh. S. L. Anuragi, Sr. DR

Date of hearing:	13/08/2019
Date of Pronouncement:	16/09/2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 09.08.2018 of the CIT(A)-4, New Delhi relating to A.Y.2015-16.

2. The assessee in its only effective ground of appeal has challenged the order of the CIT(A) in sustaining the addition of Rs.13,71.338/- made by the Assessing Officer u/s. 40A(3) of the IT Act.

3. Facts of the case, in brief, are that the assessee is a company engaged in the business of tour and travels and related activities in India and out of India. It filed its return of income on 27.09.2015

declaring total income of Rs.8,03,260/-. During the course of assessment proceedings the Assessing Officer observed from the details filed by the assessee that the assessee has made following cash payments exceeding Rs.20,000/- details of which are as under :-

S. No.	Particulars	Amount
1.	Hotel booking of Rs.22,378/- paid by Shri Sudhir through cash on behalf of assessee on 11.09.2014 and same was received by him from the assessee (Ledger A/c of M/s. Kempinski Ambience Hotel).	22,338/-
2.	Goa Marriage expenses Rs.7,58,407/- out of which cash payment of Rs.23,000/- made on 01.12.2014.	23,000/-
3.	Payment of Rs.76,000/- was made in cash to book the package Hotel with food.	76,000/-
4.	Cash payment of Rs.50,000/- was made on 18.07.2014 against Hotel advance booking (Marquis Hotel Limited).	50,000/-
5.	The cash payment of Rs.10,00,000/- (Rs.5,00,000/- each)made on 31.01.2015 to Hotel The Lalit Golf & Spa Resorts	10,00,000/-
6.	The cash payment of Rs.25,000/- made as Staff salary 10.10.2014	25,00,000/-
7.	Salary paid to Director in cash or Rs.75,000/- on 05.11.2014.	75,000/-
8.	Office Expense of Rs.75,000/- made in cash on 12.08.2014	75,000/-

9.	Rent of Rs.25,000/- paid in cash on 05.11.2014	25,000/-
	Total	13,71,338/-

4. Applying provisions of section 40A(3) the Assessing Officer made addition of Rs.13,71,338/- on the ground that the assessee has made payments exceeding to Rs.20,000/- in cash.

5. In appeal the Ld. CIT(A) confirmed the addition made by the Assessing Officer by observing as under :-

6.3 I have considered the finding of the AO, the submission of the appellant, the facts and circumstances of the case and the position of law. By way of background, the appellant company made certain payments in cash which are in a tabular sheet on Page 2 of the Assessment Order. Before me the appellant has made submission that the said payments have been paid because of business necessity and are covered within the ambit of Section '40(A)(3) read with Rule 6DD. The appellant company with respect to certain payments submitted that these were made to directors as reimbursement for making expenses on behalf of the company. Further with respect to other payments, the appellant company submitted that the same were made at the evening when the banks were closed and are made over the weekend when the banks were closed and hence are covered within the ambit of Rule 6DD.

6.4 I have considered the ledger accounts submitted by the appellant with respect to submission of the appellant that certain expenses are reimbursement made to directors and hence are covered within Rule 6DD(k) of the Rules. I have considered the ledger but the same does not suggest that the cash was paid to directors for reimbursement. There is no entry in the ledger account which suggests that the amount was paid to directors for reimbursement. Instead ledger account suggests that cash

was directly paid for the expenses. Further, no confirmation, and no accounts of the director and no confirmation of third party was placed on record to justify and discharge its onus that the payment was actually made by director to third party and then it was reimbursed in cash to the director. The same is true for other cash payments like salary payments and office expenses.

6.5 Further, with respect to certain payments, the appellant submitted that these are covered within the provision of Rule 6DD(j) as these payments were made in the evening or over the weekend when the banks were not in operation and hence are allowable expenses. The submission of the appellant is considered but nothing was placed on record by the appellant to justify its claim. The appellant submitted that the bank was closed on Saturday and the hotel booking was urgently required and hotel staff refused to accept the cheque. However, the appellant did not submit any documentary evidence or confirmation from the third party on record to justify its claim and to justify that the hotel refused to accept cheque and insisted on cash payment. Where assessee had not been able to show that there were some exceptional reasons for it to make payment in cash which is allowable in terms of Rule 6DD, the same cannot be allowed in terms of the provisions of Section 40A(3).

In this regard, reliance is placed on the decision of the Hon'ble Jurisdictional High Court in the case of Jhunjun Wala & Co. v. CIT [2008] 167 Taxman 58 (Delhi), wherein Hon'ble Court held that where assessee had not been able to show that there were some exceptional reasons for it to make payment in cash, Tribunal was justified in upholding disallowance of said expenditure by invoking provisions of section 40A(3). The Hon'ble High Court held as under:

"..4. A bare reading of the above provision shows that not only is the genuineness of payment and the identity of the payee required to be

established, but the assessee must also show that the payment was made in cash due to exceptional or unavoidable circumstances or because payment by way of a crossed cheque or a bank draft was not practicable or would have caused a genuine difficulty to the payee.

5. *In the reference before us, there is a finding of fact arrived at by the Tribunal to the effect that there was no exceptional or unavoidable circumstance which required the assessee to make the payment to P.C. Jain in cash nor that it was not practicable to make the payment in a manner other than through cash. In fact, Mr. Jain stated before the departmental authorities that there was no insistence that cash payment should be made.*

6. *In view of these findings of fact, it is quite clear that the assessee has not been able to show that there were some exceptional reasons for the assessee to make the payment in cash.*

7. *The ingredients of rule 6DD of the Rules read with section 40A(3) of the Act have not been satisfied by the assessee..."*

6.6 *Therefore, in view of the facts, the submission of the appellant without any cogent documents on record to substantiate the same, the disallowance made by the AO is upheld.*

6. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

7. The Ld. Counsel for the assessee submitted that the payments were made to the Hotel at Goa under exceptional circumstances. The Ld. Counsel for the assessee filed the following details regarding the payments made on various dates the details of which are as under :-

The payment of Rs. 23,000 was made by Director Sudhir Kaul out of his own pocket later on he was reimbursed the payment. The same information was given to learned Assessing Officer on dated 29.11.2017. The same is allowed as per Rule-6DD(K).

The ledger is attached on page no. 15.

- Payment of Rs. 76,000 was made in cash to book the package Hotel with food. These expenses are made in Non-Banking hours in the late evening.

The ledge is attached on page no. 16.

7. Cash payment of Rs. 50,000 was made on 18.07.2014 against Hotel advance booking (Marquis Hotel Limited). These expenses are made in Non-Banking hours in the late evening.

The ledger is attached on page no. 17.

8. Payment of Rs. 10,00,000 to Hotel Lalit Gold & Spa Resorts, Goa on dated 31.01.2015(Saturday).

The cash payment of Rs. 10,00,000 was made to Hotel to book in advance for 01.02.2015. The Bank was closed on Saturday and Hotel booking was urgently requested. Hence, in an unavoidable circumstances, the payment was made. Hotel staff refused to receive cheque. The same is allowable as per Rule-6DD(K).

Your Honor, please further note that the payment was made in Goa and not in Delhi due to urgent group booking 01.02.2015. It was required to be booked at any cost which is part of business environment of Hotel Industry.

The ledger is attached on page no. 18.

9. Staff salary payment of Rs.25,000 made on 10.10.2014:-

Your Honor, please note the staff salary payment of Rs. 25,000 was made to more than 1 employee and each employee was paid below 20,000.

The ledger is attached on page no. 19.

10. The cash payment of Rs. 75,000 on 05.11.2014 to salary paid to Director :-

Your Honor, we inform that the payment of Rs. 75,000 was made to Directors and not one director. There are 4 director in the company and equal payment of Rs. 18,750 per director was awarded.

The ledger is attached on page no. 20.

11. Office expenses of Rs. 75,000 made in case on 12.08.2014:-

The account page is attached. The actual payment was Rs. 50,000 and not Rs. 75,000 and learned assessing officer has made mistake in writing assessment order. He prepared the order in hasty manner.

Your Honor, the payment of office expenses was made on reimbursement of petty cash book expenses. Actually, the accountant is given small cash to incur day to day expenses and once the expenses are totally incurred, the payment is recorded at one go to avoid very small petty expenses. Hence the payment is not incurred in a single day in excess of Rs. 20,000 and should not be disallowed.

The ledger is attached on page no. 21.

12. Rent payment of Rs. 25,000 on dated 05.11.2017:-

Your Honor, the payment of Rent includes too Rent payments of Rs. 15,000 and Rs. 10,000.

8. Referring to the decision of the Cuttack Bench of the Tribunal in the case of M/s. Laxmi Narayan Jewellery Vs. ITO vide ITA No.250/CTK/2018 order dated 13.05.2019, he submitted that under identical circumstances the Tribunal has deleted the addition made u/s. 40 A(3) of the IT Act.

9. The Ld. DR on the other hand heavily relied on the order of the CIT(A).

10. I have considered the rival arguments made by both the sides and perused the orders of the authorities below. I find the Assessing Officer invoking the provisions of section 40A(3) made addition of Rs.13,71,338/- to the total income of the assessee which has been confirmed by the CIT(A) and the reasons of which has already been reproduced in the preceding paragraphs. It is the submission of the Ld. Counsel for the assessee that certain payments were made in non banking hours in the late evening and certain payments were made on a date when bank was closed and the hotel booking was urgently required. Similarly it is also the submission of the Ld. Counsel for the assessee that certain payments were made to a number persons where each payment was below Rs.20,000/-. In my opinion the Assessing Officer has not properly considered the factual aspect and has suddenly jumped to the conclusion for violation of section 40 A(3). Considering the totality of the facts of the case and in the interest of justice I deem it proper to restore the issue to the file of the Assessing Officer with a direction to go through the above details and decide the

issue as per fact and law after giving due opportunity of being heard to the assessee. While doing so the Assessing Officer shall also consider the payments made on a day when the bank was closed or where the payments have been made to various persons where each payment is below Rs.20,000/-. The Assessing Officer shall accordingly decide the issue as per fact and law. I hold and direct accordingly. The grounds raised by the assessee is allowed for statistical purpose.

10. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 16.09.2019.

Sd/-
(R.K PANDA)
ACCOUNTANT MEMBER

Neha

Date:- 16.09.2019

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	04.09.2019
Date on which the typed draft is placed before the dictating Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	16.09.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	