

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'E' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.275/Del./2012
(ASSESSMENT YEAR : 2008-09)**

M/s. S.G. Enterprises,
1/2687, Ram Lal Chandhok Marg,
Kashmere Gate,
New Delhi – 110 006.

vs. ACIT, Circle 20 (1),
New Delhi.

(PAN : AAPFS5959M)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Rakesh Gupta, Advocate
REVENUE BY : Shri N.K. Bansal, Senior DR

Date of Hearing : 02.09.2019

Date of Order : 01.10.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, M/s. S.G. Enterprises (hereinafter referred to as the 'assessee') by filing the present appeal sought to set aside the impugned order dated 01.12.2011 passed by the Commissioner of Income - tax (Appeals)-XXII, New Delhi qua the assessment year 2008-09 on the ground that :-

“Whether the Ld. CIT (A) was justified in disallowing purchases amounting to Rs.19,30,605/- from M/s. Sumit Enterprises and Rs.16,27,004/- from M/s. Paras Enterprises.”

2. At the very outset, the ld. AR for the assessee submitted that he does not want to press the additional grounds, hence the same are dismissed as not pressed.

3. Briefly stated the facts necessary for adjudication of the issue at hand are : Assessee is a civil contractor engaged in the supply of labour and material to the Municipal Corporation of Delhi. Assessee disclosed the sale at Rs.1,30,66,921/- and labour charges received at Rs.60,56,537/- and shown the gross profit rate of 17.93% i.e. Rs.34,28,369/-. From the perusal of bills, Assessing Officer (AO) noticed that the assessee has prepared computerised bill in the name of M/s. Sumit Enterprises and M/s. Paras Enterprises and to give them the colour of genuineness, VAT @ 12% has been shown for which payment in both the accounts were shown by cheque and in case of M/s. Sumit Enterprises, the payment shown by cheque was at Rs.19,10,000/- in advance as against opening balance account of Rs.1,52,070/- and as such shown a sum of Rs.17,97,930/- on 11.10.2007 as receivable from M/s. Sumit Enterprises. On failure of the assessee to prove the genuineness of the purchases, the AO proceeded to hold that the assessee did not make any purchases of goods from these parties nor such parties are in existence, thus shown the bogus purchases & vouchers and thereby made an addition of Rs.39,04,809/- as unexplained expenditure under section 69 of the Income-tax Act, 1961 (for short 'the Act').

4. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has partly allowed the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

5. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. Undisputedly, the assessee has successfully proved the genuineness of the parties and bonafide nature of the payment before the Id. CIT (A), who has however made addition u/s 40A(3) on the ground that the payment of Rs.19,30,605/- and Rs.16,27,004/- to M/s. Sumit Enterprises and M/s. Paras Enterprises respectively were made by self cheque and not through account payee cheque. It is also not in dispute that section 40A(3) has come into existence w.e.f. April 1, 1968.

7. The Id. AR for the assessee contended that when identity of the parties and genuineness of the transaction was duly proved before Id. CIT (A), the provisions contained u/s 40A(3) are not attracted and relied upon the CBDT Circular No.6-P dated 06.07.1968 and Circular No.1/2009 dated 27.03.2009. Assessee also relied upon the decisions rendered by the *Hon'ble High Court of Gujarat in Anupam Tele Services vs. ITO (2014) 43 taxmann.com 199, coordinate Bench of the Tribunal in Nirmal Kumar Das, Midnapore vs. ACIT - ITA*

No.391/Kol/2014 order dated 11.12.2015, Manoranjan Raha Nadia vs. ACIT in ITA No.1448/Kol/2011 and Hon'ble Rajasthan High Court in Smt. Harshila Chordia vs. ITO (2008) 298 ITR 349 (Rajasthan).

8. However, on the other hand, ld. DR for the Revenue in order to reply the arguments addressed by the ld. AR for the assessee contended that when the assessee has failed to demonstrate the facts which compelled him to make payment in cash, disallowance u/s 40A (3) is sustainable and relied upon the judgments of *Hon'ble High Court of Madras in Natesan Krishnamurthy vs. ITO (2019) 103 taxmann.com 342 (Madras)*, *Hon'ble High Court of Bombay in Madhav Govind Dhulshete vs. ITO (2018) 99 taxmann.com 56 (Bombay)* & *Hon'ble High Court of Kerala in MRS Roadways vs. CIT (2014) 367 ITR 62 and decisions of coordinate Benches of the Tribunal in Prathamik Krishi Pattin Sahakari Bank Ltd. vs. ITO (2015) 55 taxmann.com 412 (Panaji-Trib.) & International Ships Stores Supplies vs. JCIT (2017) 162 ITD 73 (Mumbai – Trib.)*.

9. Hon'ble High Court of Rajasthan in case of *Smt. Harshila Chordia* (supra) relied upon by the ld. AR for the assessee decided the identical issue by returning following findings :-

“Held that there was no dispute about the genuineness of the transactions and the payment and identity of the receiver were established. Further the assessee was receiving payments in cash from her customers at Kankroli and was to get delivery of vehicles from Udaipur and she had opened a bank account to facilitate quick transfers of money from bank to its dealer to satisfy the conditions of section 40A(3). She had left the signed cheque. book also in possession of the dealer so that the cash was transmitted in the assessee's bank account and he could receive

the payments through cheques. It was apparent that the assessee had done all that she was required to do. The modus operandi of the assessee was accepted by the Tribunal while considering the question of the cash credit that deposit of each receipt of the cash money from its customers separately was not conducive to the type of the business which the assessee was running. Moreover, the assessee and the principal dealer had struck a way out by opening a bank account at Udaipur so that neither the payment to principal dealer was delayed because of the bank middleman nor the assessee was required to deposit every receipt from his customers and then draw a cheque and send it to the principal dealer. The one significant factor which was not disputed and which was found to be correct was that the assessee was to receive his supplies from the principal dealer who was situated at Udaipur and the dealing was from buyer to buyer. Therefore, making the prompt payments to dealer, the cash consideration received from end purchaser and getting delivery of vehicles for such purchaser by payment of consideration received from him to principal dealer, was a modus operandi. Additions should not be sustained on technical ground if the principal dealer had retained cash payment with him without routing it through assessee's bank account at Udaipur, whenever such situation had arisen. In these circumstances the payment in question was covered by clause (j) of rule 6DD and the Tribunal was not justified in disallowing the same.”

10. Ld. AR also relied upon the decision rendered by the coordinate Bench of the Tribunal in case of *Lord Krishna Dwellers (P) Ltd. vs. DCIT in ITA No.5294/Del/2013 order dated 17.12.2018* wherein identical issue has been decided by returning following findings :-

“19. Before us, the ld. counsel for the assessee stated that the transactions found in the sale deeds are duly recorded in the regular books of account of the assessee and the Assessing Officer has not pointed out any defect in the said transactions. It is the say of the ld. counsel for the assessee that the Assessing Officer has neither doubted the genuineness of the transaction nor he has doubted the identity of the payees. Therefore, mechanical invocation of provisions of section 40A(3) of the Act is uncalled for and the additions should be deleted.

20. Per contra, the ld. DR strongly supported the findings of the Revenue authorities. It is the say of the ld. DR that application of section 40A(3) is mandatory and if there is a

violation of the said provision, then, the Assessing Officer is bound to make additions as per law.

21. We have given thoughtful consideration to the orders of the authorities below. There is no dispute that the purchases of land are duly recorded in the books of account of the assessee. There is also no dispute that the payees were identified from the sale deeds itself and the transactions have been held to be genuine. In our understanding, since the genuineness of the payments and identity of the payees is not doubted by the Revenue, the provisions of section 40A(3) of the Act could not be made mechanically. In our considered opinion, the intention behind introduction of provisions of section 40A(3) of the Act has to be looked into.

22. This provision was inserted by the Finance Act, 1968 with the object of curbing the 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.”

11. When we examine the issue in controversy in the light of the CBDT Circular No. 6-P dated 06.07.1968 and Circular No.1/2009 dated 27.03.2009, it is apparently clear that this provision has been incorporated to counter evasion of tax for claim of expenditure shown to have been incurred in cash with a view to frustrate proper investigation by the Department as to the identity of the payee and the reasonableness of the payment. In the instant case, when the identity of the parties who have made the payment have been proved and genuineness of the transaction is also not in dispute, mechanically invoking the provisions contained u/s 40A(3) is not permissible. Moreover, all the payments in question have been duly recorded in the books of account and there is no question of claiming for any expenditure. So, following the decision

rendered by the Hon'ble Rajasthan High Court in *Smt. Harshila Chordia* (supra) and coordinate Bench of the Tribunal in *Lord Krishna Dwellers (P) Ltd.* (supra), we are of the considered view that ld. CIT (A) has erred in disallowing the purchases to the tune of Rs.19,30,605/- and Rs.16,27,004/- from M/s. Sumit Enterprises and M/s. Paras Enterprises respectively and as such, the disallowance made is not sustainable, hence ordered to be deleted. The contention raised by the ld. DR and the decisions relied upon are not applicable to the facts and circumstances of the case. Consequently, the appeal filed by the assessee is allowed.

Order pronounced in open court on this 1st day of October, 2019.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 1st day of October, 2019
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)- XXII, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**