

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

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

**ITA No.3800/Del./2016
(Assessment Year : 2006-07)**

Shri Girdhari Lal Chawla,
C – 93, Preet Vihar,
Delhi – 110 092.

vs. ACIT, Circle 36 (1),
New Delhi.

(PAN : ADDPC7437K)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ved Jain, Advocate

Shri Akshit Goel, CA

REVENUE BY : Shri J.K. Mishra, CIT DR

Date of Hearing : 11.09.2019

Date of Order : 21.10.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, Shri Girdhari Lal Chawla (hereinafter referred to as the 'assessee') by filing the present appeal, sought to set aside the impugned order dated 29.03.2016 passed by the Commissioner of Income - tax (Appeals)-19, New Delhi qua the assessment year 2006-07 on the grounds inter alia that:-

“1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad, both in the eye of law and on the facts.

2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in passing the impugned order, without giving the assessee a proper and adequate opportunity of being heard in clear violation of the principles of natural justice.

3.(i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the order of the AO, despite the fact that the initiation of proceedings under section 147, read with section 148 are bad in law, as the conditions and procedure prescribed under the statute have not been complied with.

(ii) That the learned CIT(A) has erred both on facts and in law in confirming the order of the AO despite the fact that the order was passed by the AO without providing the copy of reasons recorded, on the basis of which the re-assessment has been done and thus, the re-assessment is void ab-initio and liable to be quashed.

4.(i) On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the disallowance of an amount of Rs.11,59,000/- on account of payment made for purchase of land, by invoking the provision of section 40A(3) of the Act.

(ii) That the said disallowance has been confirmed by the Ld. CIT(A) by rejecting the contention of the assessee that the case of the assessee is covered under the exceptions provided in Rule 6DD of the Income Tax Rules, 1962.

5. Without prejudice to the above and in the alternative, the Ld. CIT(A) has erred, both on facts and in law in confirming the disallowance of 100% expenditure u/s40A(3) of the Act, despite the fact that the disallowance permissible as per law is 20% of such expenditure.”

2. Briefly stated the facts necessary for adjudication of the issue at hand are : assessee is an individual engaged in the real estate business who has filed return for the year under assessment at an income of Rs.1,07,36,390/- as on 31.10.2006 and the same was processed under

section 143 (1) of the Income-tax Act, 1961 (for short 'the Act'). When assessee's case was reopened under section 147 of the Act and assessee opted for treating his return of income filed under section 139(1) of the Act as return filed in response to the notice issued under section 148 of the Act. During the assessment proceedings, assessee was called upon to explain the cash payment of Rs.11,59,000/- (Rs.4,00,000/-, Rs.3,26,000/- + Rs.4,00,000 (bayana) & Rs.33,000/- qua the property bearing Khasra No.159, Mauja Tapovan, Tehsil Narendranagar, Tehri Garhwal, Khasra No.82D, 86D, 87B, Mauja Haripur Kala, Rishikesh, Dehradun and Khasra No.82D, Mauja Haripur Kala, Rishikesh, Dehradun respectively). Declining the contentions raised by the assessee, Assessing Officer (AO) proceeded to make addition of Rs.11,59,000/- on account of cash payment having been made in contravention of section 40A(3) of the Act and thereby assessed the total income at Rs.1,18,95,390/-.

3. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has confirmed the addition by dismissing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. 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.

GROUNDS NO.1 & 2

5. Grounds No.1 & 2 are general in nature and do not require any specific adjudication.

GROUND NO.3

6. Ground No.3 is dismissed having not been pressed during the course of arguments.

GROUND NO.4

7. Undisputedly, assessee has made cash payment of Rs.11,59,000/- for purchasing three properties in violation of provisions contained under section 40A(3) of the Act. It is contended by the Id. AR for the assessee that since the date of sale of land fell on the date on which the banks were closed, the properties were purchased with cash and it is further contended that since the AO has not disputed the genuineness of the payment made, addition is not sustainable and is required to be treated having been made in exceptional circumstances and relied upon the decision rendered by *Hon'ble Supreme Court in case of Attar Singh Gurmukh Singh vs. ITO, Ludhiana 191 ITR 667 (SC)*.

8. However, on the other hand, Ld. DR for the Revenue to repel the arguments advanced by the Id. AR for the assessee contended that the plea of genuineness of the transaction has never been taken by the assessee before the AO nor he has produced any confirmation from the vendor and the affidavit relied upon is self-serving document.

9. No doubt, Hon'ble Supreme Court in case of *Attar Singh Gurmukh Singh* (supra) held that genuine and bonafide transactions are taken out of the sweep of the section 40A(3) and it is open to the assessee to furnish to the satisfaction of the AO the circumstances under which the payment in the manner prescribed in section 40A(3) was not practicable and would have genuine difficulties to the payee. But, in the instant case, the assessee has been given ample opportunities by the AO as well as Id. CIT (A) to prove if the transaction was genuine and bonafide and the payment has been made in the exceptional circumstances but, except for getting adjournments, the assessee has not brought on record an iota of evidence to bring this fact rather continued to harp on affidavits which are nothing but self serving documents. Even, during the remand proceedings, numerous opportunities have been granted by the AO to the assessee to bring on record the necessary evidence but he has not preferred to do so. So, in these circumstances, AO has rightly made the addition which has been validly and legally confirmed by the Id. CIT (A). Consequently, Ground No.4 is determined against the assessee.

GROUND NO.5

10. Ld. CIT (A) has confirmed the disallowance of 100% expenditure made u/s 40A(3) of the Act by the AO. Ld. AR for the assessee contended that as per the provisions contained under section 40A(4), relevant for AY 2006-07, 20% of such expenditure made under section

40A(iii) of the Act shall not be allowed as deduction. Ld. AR for the assessee contended that ld. CIT (A) has erred in making permissible disallowance to the tune of 20% of the total expenditure of Rs.11,59,000/- made under section 40A (3) of the Act.

11. Ld. AR for the assessee has brought on record the fact that he had moved an application under section 154 of the Act before the AO who has allowed the same by returning following findings :-

“ The Assessment in this case was completed u/s 143(3) on 24.03.2014 at income of Rs. ,18,95,390/-. The assessee vide letter dated 01/04/2014 filed application u/s 154 submitting that in the assessment order an addition of Rs.11,59,000/- was disallowed for cash payment u/s 40A(3) of the I.T. Act, 1961 @ 100% of cash payment of Rs.11,59,000/ -, while for the assessment year under consideration, the cash payment was disallowable @20% u/s 40A(3).

The application of assessee has been considered and on verification of assessment records it was found that assessee's contention is correct Accordingly, the total income of the assessee is recomputed as under:

<i>Income as per returned filed by the assessee</i>	<i>Rs.1,07,36,390/-</i>
<i>Add: 20% of cash payment of Rs.11,59,000/- u/s 40A(3)</i>	<i>Rs.2,31,800/-</i>
<i>Total assessed income</i>	<i>Rs.1,09,68,190/-”</i>

12. However, ld. CIT (A) losing sight of the fact that the AO has already granted the relief to the assessee by disallowing 20% of the cash amount of Rs.11,59,000/- under section 40A(3) vide order dated 10.07.2014 passed under section 154 of the Act confirmed the entire addition of Rs.11,59,000/-. We are of the considered view that when the relief sought for is admissible to the assessee as per provisions contained under section 40A(3) relevant to the assessment year under

consideration, Id. CIT (A) has erred in confirming the addition of Rs.11,59,000/-. Consequently, Ground No.5 is determined in favour of the assessee and disallowance permissible as per law to the extent of 20% of cash payment of Rs.11,59,000/- is held to be sustainable in the eyes of law.

13. Resultantly, the appeal filed by the assessee is partly allowed

Order pronounced in open court on this 21st day of October, 2019.

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

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

Dated the 21st day of October, 2019

TS

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-19, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**