

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ, अहमदाबाद ।
**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD**

**BEFORE SHRI RAJPAL YADAV,
HON'BLE JUDICIAL MEMBER
AND
SHRI WASEEM AHMED
HON'BLE ACCOUNTANT MEMBER**

**ITA.No.2891/Ahd/2016
निर्धारण वर्ष/Asstt.Year : 2010-11**

DCIT, Cir.2(1)(2) Ahmedabad.	Vs	M/s.Kunj Infrastructure P.Ltd. 4 th Floor, Zodiac Plaza St.Xaviers Corner Navrangpura Ahmedabad 80 009. PAN : AADCK 1900 D
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
Revenue by :	Shri Dileep Kumar, Sr.DR
Assessee by :	None

सुनवाई की तारीख/Date of Hearing : 26/11/2019
घोषणा की तारीख /Date of Pronouncement: 04/12/2019

आदेश/ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER

Revenue is in appeal before the Tribunal against order of the ld.CIT(A)-2, Ahmedabad dated 22.8.2016 passed for the assessment years 2010-11.

2. Revenue has taken four grounds of appeal, but its grievance revolves around a single issue viz. the ld.CIT(A) has erred in deleting the disallowance

of Rs.4,35,000/- which was disallowed by the AO with aid of section 40A(3) of the Income Tax Act.

3. In response to the notice of hearing, no one has come present on behalf of the assessee. With the assistance of the Id.DR, we have gone through the record carefully. It emerges out from the record that the assessee has filed return of income on 14.10.2010 declaring NIL income. An assessment order was passed under section 143(3) on 4.3.2013 determining total loss at Rs.68,02,400/-. The case of the assessee was reopened on account of audit objection. Notice under section 148 of the Act was issued and served upon the assessee. In the re-assessment proceedings, the AO was of the opinion that the assessee has debited a sum of Rs.4,35,000/- under the head “legal expenses”. This payment was made to M/s.C.C. Gandhi & Co., in cash. Thus, according to him, there was violation of section 40A(3) of the Act. In other words, the assessee should have paid this amount through account payee bank draft. He accordingly disallowed the same. Dissatisfied with the disallowance, the assessee carried the matter in appeal before the Id.CIT(A). The Id.CIT(A) deleted the same. Revenue came up before the Tribunal vide present appeal. However, its appeal was dismissed due to low tax effect involved in it by applying CBDT Circular No.21 of 2015. Dissatisfied with this order of the Tribunal, Revenue went in appeal before the Hon’ble High Court in Tax Appeal No.1314 of 2018. Hon’ble court has set aside the order of the Tribunal vide order dated 5.8.2019, and remitted to the Tribunal for adjudication of the appeal on merit, because the assessment was reopened on an audit objection. If the case is being reopened on audit objection, then it fall within the exception of the circular no.3 of 2018 and the appeal cannot be dismissed on account of low tax effect involved in it.

4. With the above background, we proceed to decide the appeal on merit. The ld.CIT(A) has recorded a detailed finding. It reads as under:

“I have carefully considered the facts of the case, the reassessment order and the written submission of the appellant. The AO has made the disallowance of Rs.4,35,000/- being the cash payment made to M/s. C. C. Gandhi & Co., Advocates by the appellant. The AO after verifying the bill copy submitted before him has found that the assessee has paid Rs.4,35,000/- to C. C. Gandhi & Co. as stamp duty, registration fee, typing, Xerox and miscellaneous expenses. The AO observed that although the assessee has furnished the Xerox copy of the bill raised and receipt furnished by C. C. Gandhi & Co., Ahmedabad but has not furnished any documentary evidences with regard to stamp duty, receipt of registration fee, typing bills, Xerox bills or any other misc. bills, from which it could be ascertained that above expenses incurred in cash were with regard to above expenditure. The AO also observed that the assessee has not given any supporting evidence with regard to the circumstances wherein the above cash amount was paid due to any exception or any other unavoidable circumstances of any business exigencies. The AO also observed that the aforesaid payment could have been made through cheque and the nature of payment was also professional services.

5.4. On the other hand, the appellant has submitted that the appellant was in the business of construction activities and due to financial crises, it has taken the loan from the State Bank of India for which it has incurred certain statutory dues and other legal payments. The appellant has incurred legal expenses of Rs.4,55,000/- which includes Rs.4,35,000/-towards stamp duty, registration fee, typing Xerox and other expenses and balance Rs.20,000/- for professional fees of M/s. C.C. Gandhi & Co. It was also submitted that as per the amended provisions due to business expediency and other factors, the assessee has to make payment in cash and the same is not disallowable u/s. 40A(3) of the I. T. Act. In this regard, it has also relied upon the CBDT Circular No. 220. It was also submitted that the payment towards stamp duty, registration fee etc. are being payment to the government which are not accepted through cash, therefore, these payments were made to the government through M/s. C. C. Gandhi & Co. and therefore, no disallowance could be made.

5.6. *Having considered the facts and submissions, it is noticed that undisputedly as per the copy of bill submitted by the appellant, payment of Rs.4,35,000/- towards stamp duty, registration fee, typing, Xerox and other expenses for the purpose of completing the statutory requirements for taking the loan from SBI which was for the purpose of business. Since the payment towards stamp duty, registration fee etc. were made to the government through M/s. C. C. Gandhi & Co. and the same was covered under Rule 6DD(b) under the exception clause. Therefore, no disallowance upon the same is warranted. Merely no breakup of the aforesaid expenditure and the evidences could be submitted will not call for the disallowance. For taking the loans by the appellant for the purpose of business, the legal formalities were to be completed for which the major expenditure happens to be in respect of stamp duty and registration fee etc. Since the loan formalities have been completed through M/s. C. C. Gandhi & Co. to whom payments were made and thereafter the same were deposited by him. Even otherwise also, stamp duty and registration charges are not accepted through cheques, but are to be paid in cash. Merely the AOs plea that firstly the payments to M/s. C.C. Gandhi & Co. could have been made by the cheque and then it could have been paid by cash do not make any difference ultimately the payments to the government were made in cash. It is also not in dispute or controverted by the AO that the stamp duty and registration expenses were not relating to the loans taken by the appellant from SBI.*

5.7. *In view of the aforesaid discussion, the provisions of section 40A(3) of the I. T. Act are not applicable over the facts of the case, and therefore, the disallowance made by the AO is deleted.”*

5. Section 40A(3) contemplates that where 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 account excess Rs.20,000/- then no deduction shall be allowed in respect of such payment. However, Rule 6DD of Income Tax Rules, 1962 provide an exemption from applicability of this clause, and the Id.CIT(A) has followed rule 6DD which has been explained by the Board in its Circular No.220. This explanation has been submitted by the assessee in its written submissions reproduced by the Id.CIT(A) on page no.7. The Id.CIT(A) is of the opinion

that the case of the assessee falls within the exception because it has made this payment on account of business exigency and it was not practical to make the payment through account payee cheque. Considering the above aspects, the ld.CIT(A) has rightly deleted the addition, and no interference is called in the impugned order of the ld.CIT(A).

6. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 4th December, 2019 at Ahmedabad.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER