

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “ A ” BENCH: BANGALORE

**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.346/Bang/2017
(Assessment Year: 2008-09)

Shri N.R. Shetty Prashant,
Balaji Electrical, B.H. Road,
Nittur Post, Gubbi, Tumkur Dist.
PAN AJKPP1166F

....Appellant

Vs.

Income Tax Officer,
Ward 2, Tumkur.

.....Respondent.

Assessee By:	Shri H. Guruswamy, ITP
Revenue By:	Shri Manjeet Singh, Addl. CIT (D.R)

Date of Hearing :	11.03.2020
Date of Pronouncement :	20.03.2020

ORDER

PER SHRI PAVAN KUMAR GADALE, JM :

The assessee has filed the appeal against the order of Commissioner of Income Tax (Appeals)-7, Bangalore passed under Section 143(3) r.w.s. 254 of the Income Tax Act, 1961 ('the Act').

2. The assessee has raised the following grounds of appeal :

1. The Appellate order dated 30-11-2016 is opposed to law and facts of the case.
2. The Learned Commissioner of Income-tax (A), Bangalore - 7 ought to have held that the cash payments made in excess of Rs. 20,000/- was for the business expedience as contemplated by a proviso provided to section 40A(3) of the Act.
3. The Learned Commissioner of Income-tax (A), Bangalore - 7 ought to have appreciated the facts and circumstances of the case that the Appellant has established the fact the suppliers of the goods have insisted upon cash payment.
4. The Learned Commissioner of Income-tax (A), Bangalore - 7 ought to have appreciated the facts that the Appellant has established the facts such as business expediency, identity of the payee and other relevant factors, which have necessitated the cash payments in excess of Rs. 20,000/- prescribed u/s. 40A(3) of the Act.

5. The Learned Commissioner of Income-tax (A), Bangalore - 7 ought to have appreciated the facts that the Rule 6DD is applicable to section 40A(3) of the Act which is not absolute since a overriding proviso was provided to the said provision according to which the expedience of the business and other relevant factors are required to be considered.
6. The appellant craves leave to add, alter, amend and delete any of the grounds at the time of hearing.

3. The Brief facts of the case are that the assessee is engaged in the retail business of cement and electrical goods and filed the Return of Income on 28.08.2008 with total income of Rs.2,28,890/-. Subsequently, the case was selected for scrutiny and Notice under Section 143(2) of the Act was issued. In compliance, the learned Authorized Representative of the assessee appeared from time to time and submitted the details. Whereas, the original assessment was completed under Section 143(3) of the Act on 29.01.2010. After getting marginal relief from CIT(Appeals), the assessee has filed an appeal before the Tribunal. The Hon'ble Tribunal in ITA No.688/Bang/2011 dt.12.06.2012 remanded the issue of disallowance under Section 40A(3) of the Act to the file of Assessing Officer for fresh adjudication with specific directions. Accordingly, the Assessing Officer has issued the letter and called for the information. The assessee has filed submissions

on 10.10.2012 and 13.10.2012, whereas the Assessing Officer was not satisfied with the reasons and judicial decisions relied on by the assessee. The Assessing Officer found that the assessee has made payments to the creditors in cash on specific request and not explained the exigency for making cash payments. Accordingly, the Assessing Officer has made disallowance of Rs.9,20,569/- under the provisions of Section 40A(3) of the Act and passed order under Section 143(3) r.w.s. 254 of the Act dt.24.03.2014. Aggrieved by the order, the assessee has filed an appeal with the CIT (Appeals). Whereas, the CIT (Appeals) considering the assessee's submissions, findings of the Assessing Officer has confirmed the action of the Assessing Officer and dismissed the appeal. Aggrieved by the CIT (Appeals) order, the assessee has filed an appeal with the Tribunal.

4. At the time of hearing, the learned Authorized Representative submitted that the CIT (Appeals) has erred in confirming the addition, overlooking the facts that the payments have been made to the party on request, as there was no banking facility available on particular day and substantiated his arguments with Paper Book and explained the exigencies and exceptional circumstances of cash payments, and such payments are made wholly and exclusively for the purpose of business. Contra, the learned Departmental Representative supported the orders of the CIT(Appeals).

5. We heard the rival contentions and perused the material on record. The sole disputed issue is with respect to the disallowance under Section 40A(3) of the Act confirmed by the CIT(Appeals). The Ld. AR submitted that the CIT(Appeals) has erred in confirming the disallowance made by the Assessing Officer irrespective of the facts that the payments were made in exigency, where the assessee was directed to make the payment in cash on the request of the seller. These payments were confirmed by the sellers and confirmation letters were filed with the assessing authority. The learned Authorized Representative relied on the judicial decisions and vehemently objected to the observations of the Assessing Officer that there was no exigency for cash payments by the assessee. The contentions of the Ld. AR that the identity and genuineness of the transactions is not doubted and there exist business exigency in purchase of goods for cash payments from the supplier, otherwise the assessee shall not get goods on time for smooth running of the business and adjust to the demand and supply trend. Further assessee filed the details and evidences, which are not doubted by the assessing authorities. The Assessing Officer has accepted the genuineness of the transactions but since the payments are made in cash, the Assessing Officer applied the provisions under Section 40A(3) of the Act. The recipients are the suppliers identified as per the confirmations filed. The learned Authorized Representative relied on the decision of Hon'ble Supreme Court in the case of Attar Singh Gurumukh Singh Vs. ITO

191 ITR 687 (SC) and judicial decisions to substantiate the case. We considering the facts and circumstances, the evidences and the submissions of the learned Authorized Representative supported with the Paper Book are of the view that disallowance under u/sec40A(3) cannot be made without taking into consideration the Business expediency, exigencies and other relevant factors of the markets. The Assessing Officer has not doubted the genuineness of the transactions and was satisfied with evidences and identity. We are of the opinion, that the provisions of Section 40A(3) of the Act shall not be a hurdle for any business operations but only to ease the cash transactions with restrictions. In the present case, the assessee explained the exceptional circumstances and the seller has accepted the cash transaction for sale of goods. The assessee has no alternative but to make the payment in cash, so that the business of the assessee should not affect due to the technical provisions of law and the assessee has to earn income and pay taxes to the income tax department. we are of the opinion that the addition made by the Assessing Officer cannot be sustained as there is no doubt about the genuineness of transactions and the suppliers confirmation are filed before the assessing authorities . We support our view relying on the decision of the co-ordinate bench of this Tribunal in the case of ITO Vs. Shri Hafizhussain A Kamangar in ITA No.1494/Bang/2016 Dt.21.09.2016 dealt in Para 3 read as under :

3. I have considered the facts of the case and gone through the orders of the lower authorities. I find that the grievance of the revenue is about deletion of the disallowance made by the A.O. u/s 40A (3) of the I. T. Act. I also find that this was a claim of the assessee before the A.O. also that major payment of Rs. 47,06,099/- out of total cash payments of Rs. 48,31,756/- is made to one m/s Abdulla Sab Kamangar, who was acting as an agent for purchase of Onion and therefore, as per clause (k) of Rule 6DD

of Income Tax Rules, 1962, Section 40A (3) is not applicable. The A.O. decided the matter against the assessee on this basis that as per the ledger account of this party, it is seen that all the credit entries are shown as "By Onion Purchase Account" and therefore, it cannot be said that this payment was made to this party for acting as agent. I find no valid basis of this objection of the A.O. Learned CIT (A) has given a categorical finding on page

11 of his order that the assessee has filed complete details of the agent i.e. a certificate from APMC that Shri Abdulla Sab Kamangar is an agent and also filed a confirmation from the agent that he insisted for cash payment only for the purpose of distribution of the same to the growers of Agricultural Produce and these findings of learned CIT (A) could not be controverted by the learned DR of the revenue. Hence, I decline to interfere in the order of CIT (A).

Considering the facts and circumstances and further the expenditure has been incurred wholly and exclusively for the purpose of business, exceptional and

business exigencies. We set-aside the order of Cit(Appeals) and direct the Assessing Officer to delete the addition and allow the grounds of appeal of the assessee.

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

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(A.K. GARODIA)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Dated: 20.03.2020.

*Reddy GP

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| 1. The Appellant | 2. The Respondent |
| 3. CIT (Appeals) | 4. Prin. CIT |
| 5. DR, ITAT | 6. Guard File. |

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore