IN THE INCOME TAX APPELLATE TRIBUNAL
"D"BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBERAND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA no.7349/Mum./2018
(Assessment Year : 2014–15)

Ramlord Apparels
9A, Akurli Industrial Estate
Akurli Road, Kandivali (East) .... Appellant
Mumbai 400 101
PAN – AAAFR3183M

v/s

Asstt. Commissioner of Income Tax
Circle–33(3), Mumbai .... Respondent

Revenue by : Shri Kamal Mangal & Kavita P. Kaushik
Assessee by : Shri S.C. Tiwari a/w Ms. Rutuja Pawar

Date of Hearing – 07.08.2020	Date of Order – 03.09.2020

O R D E R

PER SAKTIJIT DEY. J.M.

The captioned appeal has been filed by the assessee challenging the order dated 30th October 2018, passed by the learned Commissioner of Income Tax (Appeals)–45, Mumbai, pertaining to the assessment year 2014–15.

Before we proceed to decide the appeal, it is necessary to observe, the appeal was earlier fixed for hearing on 16.01.2020.

Learned counsels appearing for the parties were heard at length and the hearing was closed. However, due to the extraordinary situation arising out of the pandemic COVID–19 leading to nationwide lockdown, the order could not be finalized and pronounced. By the time little bit of normalcy returned and the institution started functioning in a limited scale, considerable time has elapsed. Therefore, it was felt necessary to put the appeal for clarification so that learned counsels appearing for parties would get a fair chance to make further submissions, if any, for enabling the Bench to decide the appeal. Accordingly, appeal was heard again on 07.08.2020 and in course of hearing learned counsels appearing for the parties reiterated the submissions made by them earlier.

2. In ground no1, the assessee has challenged the disallowance of expenditure incurred in cash amounting to ₹ 31,53,902 made by the Assessing Officer by invoking the provisions of section 40A(3) of the Income Tax Act, 1961 (for short *"the Act"*).

3. Brief facts are, the assessee, a partnership firm, is engaged in the business of manufacturing and export of garments. For the assessment year under dispute, the assessee filed its return of income on 24th November 2014, declaring total income of ₹ 1,66,11,740. During the assessment proceedings, the Assessing Officer while verifying the details found that the assessee has claimed foreign travel

expenses of ₹ 60,07,464, including an amount of ₹ 31,53,902, towards exhibition charges. After calling for the details of expenditure incurred and verifying them, he found that the exhibition charges of ₹ 31,53,902, was incurred in cash in foreign currency abroad. Further, he observed that the assessee could not furnish any details or supporting evidence in support of actual exhibition expense except cash memos obtained from the commission agents to whom the assessee had also paid commission. Referring to the provisions of section 40A(3) of the Act, the Assessing Officer observed, since the assessee has incurred expenses in cash exceeding the amount of ₹ 20,000 in a day, such expense has to be disallowed. After calling for an explanation from the assessee regarding the proposed disallowance and examining it, the Assessing Officer ultimately disallowed the amount of ₹ 31,53,902, under section 40A(3) of the Act. Though, the assessee contested the aforesaid disallowance before the first appellate authority, however, the disallowance made by the Assessing Officer was confirmed.

4. The learned Authorised Representative submitted, the provisions of section 40A(3) of the Act would not be applicable to the expenditure incurred in cash in foreign currency as it refers to expenditure incurred in rupees and not in foreign currency. He submitted, even otherwise also, Income Tax Act has jurisdiction over India and cannot be applied

outside territory of India. He submitted, since the assessee has incurred the expenditure in foreign currency and that too in foreign country, it will not come within the purview of section 40A(3) of the Act. Without prejudice, the learned Authorised Representative submitted, even if the provisions of section 40A(3) of the Act would be applicable, the expenditure incurred would come within the exceptions provided under rule 6DD. He submitted, since the expenditure was incurred in foreign currency, the assessee could not have issued cheque to the concerned parties, as, for issuance of cheque the assessee must have bank accounts in the respective countries. Thus, he submitted, in the absence of proper banking facilities, it would have been an impossible act on the part of the assessee to incur the expenditure through cheque, hence, the assessee would be covered under rule 6DD. In support of his contention, the learned Authorised Representative relied upon the following decisions:–

i) Vodafone India Services Pvt. Ltd. v/s Union of India & Anr., W.P. no.871 of 2014; and

ii) Union of India v/s Azadi Bachao Andolan, 263 ITR 706 (SC).

5. The learned Departmental Representative strongly relying upon the observations of the Assessing Officer and learned Commissioner (Appeals) submitted, merely because in section 40A(3) of the Act, restriction regarding cash expenditure is mentioned in rupee term it

cannot be construed that the provisions would apply only in respect of cash expenditure incurred in Indian currency and not in any other foreign currency. He submitted, what is meant by not exceeding an amount of ₹ 20,000 is cash expenditure equivalent to Rs. 20,000. He submitted, if the assessee's contention is accepted, then it would have been impossible to mention the currencies of all the countries in the provision. Therefore, the provision of section 40A(3) of the Act cannot be interpreted in a purely literal sense. He submitted, the contention of the assessee that provisions of section 40A(3) of the Act is not applicable to expenditure incurred in cash in foreign countries is actually misplaced as there is no such restriction in the said provision. Further, he submitted, the provision of rule 6DD would also not be applicable to the assessee as none of the exceptions mentioned therein apply. He submitted, though it may not have been possible for the assessee to issue cheque, however, the assessee could have paid the money in various other modes through banking channel instead of paying in cash. Thus, he submitted, disallowance of expenditure under section 40A(3) is justified.

6. We have considered rival submissions in the light of decisions relied upon and perused the material on record. As far as the factual aspect of the issue is concerned, there is no dispute that the assessee has incurred the expenditure in dispute in cash, though, in foreign

currency and abroad. It is the case of the assessee that since the provision contained under section 40A(3) of the Act speaks of incurring of cash expenditure exceeding ₹ 20,000, in a day, the provision would apply only in a case where the expenditure in cash has been incurred in Indian currency. Further, it is the contention of the assessee that Income Tax Act being applicable to territorial jurisdiction of India, the provision of section 40A(3) of the Act would not be applicable to cash expenditure incurred in foreign currency abroad. We are unable to accept the aforesaid contentions of the assessee for the reason set out below.

7. A reading of section 40A(3) of the Act makes it clear that in case the assessee incurs any expenditure for which payment to a person in a day exceeds the amount of ₹ 20,000, (as it existed during the relevant period) it would not be allowable, unless, it is paid through account payee cheque or account payee bank draft. The mention of the word *"rupee"* in section 40A(3) cannot be interpreted in a limited or narrow sense to mean only cash expenditure incurred in rupee. What the expression means is expenditure incurred exceeding the particular amount in rupee terms. Therefore, even if the expenditure is incurred in cash and in foreign currency, still the provision of section 40A(3) would be applicable if it exceeds the specified quantum in rupee term. Therefore, merely because the expression *"rupee"* has

been mentioned in section 40A(3) of the Act, it would not debar applicability of the provision to the expenditure incurred in cash in foreign currency.

8. It would be fallacious to say that in case the legislature wanted to tax expenditure incurred in foreign currency, they would have drafted the provision in a different way mentioning foreign currencies also. In our view, a reading of the provision of section 40A(3) of the Act makes the intention of the legislature quite clear to disallow any expenditure incurred in cash whether in Indian currency or in foreign currency, if it exceeds the amount of Rs. 20,000 in rupee term. Considering the fact that cash expenditure may be incurred in various countries having different currencies, it would not have been possible for the legislature to mention the currency of all the countries in the world in section 40A(3) of the Act. Therefore, the provision has to be interpreted in a manner to mean cash expenditure equivalent to more than Rs. 20,000 in a day. In any case of the matter, the assessee has debited such expenditure to the profit & loss account in rupee terms. Therefore, for avoiding applicability of section 40A(3) the assessee cannot turn around and claim that such expenditure having been incurred in foreign currency is outside the purview of the aforesaid provision. If the aforesaid contention of the assessee is accepted, it will create an anomalous situation, as, an assessee incurring cash

expenditure in India exceeding ₹ 20,000 will face the rigors of section 40A(3), whereas, another assessee incurring unlimited cash expenditure abroad in foreign currency would go scot free. This, in our humble view, could not have been the intention of the legislature while enacting section 40A(3) of the Act, as, the provision would otherwise suffer from the vice of discrimination

9. Insofar as the contention of the learned Authorised Representative that the provisions of the Act would be applicable only to the territory of India and not to the expenditure incurred abroad, we are unable to accept the same. Undisputedly, the expenditure incurred in cash has been booked in India by debiting to the profit and loss account, that too, in rupee terms. Therefore, the Assessing Officer has all the powers to examine the allowability of such expenditure under the provisions of the Act while making assessment of the assessee. That being the case, it cannot be said that the provisions of section 40A(3) would not be applicable.

10. As regards the contention of the learned Authorised Representative regarding the applicability of rule 6DD, we find the same to be totally misplaced. On a reading of rule 6DD we do not find any specific clause therein which can come to the aid of the assessee. Even, accepting that the assessee could not have issued a cheque to the payee, however, there are many other ways open to the assessee

for making the payment through proper banking channel. Since, the assessee has failed to do so, the provisions of section 40A(3) of the Act is clearly attracted and the expenditure incurred in cash deserves to be disallowed. The decisions relied upon by the learned counsel for the assessee, on careful examination, were found to be of no help to the assessee. Accordingly, we uphold the decision of learned Commissioner (Appeals) on the issue while dismissing the ground raised by the assessee.

11. In ground no.2, the assessee has challenged part disallowance of vehicle, conveyance and telephone expenses.

12. Brief facts are, during the assessment proceedings, the Assessing Officer noticed that the assessee has debited an amount of ₹ 17,33,647, towards expenditure incurred on vehicle, conveyance and telephone expenses. Holding that involvement of personal element in the aforesaid expenditure cannot be ruled out, the Assessing Officer disallowed an amount of ₹ 1,73,365, being 10% of the total expenditure claimed. Though, the assessee contested the aforesaid disallowance before the first appellate authority, however, learned Commissioner (Appeals) confirmed the disallowance made by the Assessing Officer.

13. The learned Authorised Representative submitted, the disallowance has been made purely on ad–hoc basis without any sound reasoning. Thus, he submitted, the expenditure claimed by the assessee should be allowed in full.

14. The learned Departmental Representative relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

15. We have considered rival submissions and perused the material on record. A perusal of the assessment order reveals that the Assessing Officer has disallowed 10% of the expenditure claimed by the assessee purely on ad–hoc basis assuming personal use. However, what is the nature of enquiry conducted by the Assessing Officer to establish personal use is not forthcoming from the assessment order. It is also not clear whether the Assessing Officer has called upon the assessee to furnish evidence that there is no personal element involved in the expenditure. Learned Commissioner (Appeals) has also confirmed the addition purely on the basis of the observations made by the Assessing Officer. In our view, without establishing the fact that a part of the expenditure incurred by the assessee is towards personal use, no disallowance can be made purely on presumption and surmises. Accordingly, we delete the disallowance of ₹ 1,73,365. Ground raised by the assessee is allowed.

16. Grounds no.3 and 4, raised by the assessee being general in nature do not require adjudication, hence, dismissed.

17. In the result, appeal is partly allowed.

Order pronounced through notice board under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963, on 03.09.2020

Sd/- **G. MANJUNATHA** **ACCOUNTANT MEMBER**	**Sd/-** **SAKTIJIT DEY** **JUDICIAL MEMBER**

MUMBAI, DATED: 03.09.2020

<u>Copy of the order forwarded to</u>:

(1) The Assessee;

(2) The Revenue;

(3) The CIT(A);

(4) The CIT, Mumbai City concerned;

(5) The DR, ITAT, Mumbai;

(6) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai