

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'B' JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 1077/JP/2018  
निर्धारण वर्ष/Assessment Year :2014-15

Shri Ravinder Kumar Sharma P. No. 2, Ganpati Nagar, Main Balaji Road, Phulera, Jaipur	बनाम Vs.	The DCIT, Circle-07, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BAKPS6109R		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri. Manish Agarwal (CA)  
राजस्व की ओर से/ Revenue by : Smt. Runi Pal (Addl. CIT)

सुनवाई की तारीख/ Date of Hearing : 13/10/2020  
उदघोषणा की तारीख/ Date of Pronouncement: 11/11/2020

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-3, Jaipur dated 27.08.2018 wherein the assessee has taken the following grounds of appeal:-

"1. On the facts and in the circumstances of the case, the Ld. CIT(A) has grossly erred in confirming addition of Rs. 30,60,000/- made u/s 40A(3) of the Income Tax Act, 1961 arbitrarily without considering the submissions made and evidences adduced and the exceptional circumstances as per Rule 6DD of the Income Tax Rules, 1962, hence the addition of Rs. 30,60,000/- so made deserves to be deleted.

1.1 That the Ld. CIT(A) has further erred in ignoring the evidences adduced in the shape of certificate from Sarpanch as well as the affidavit of the seller who sold the property that there were no banking facility available at the place where the seller was residing and moreover by ignoring that

*the seller (Smt. Teja Devi) did not have any bank account and thereby the payment so made was fully covered within the exceptions provided in Rule 6DD of I T Rules. Hence the addition so made deserves to be deleted.*

*2. On the facts and in the circumstances of the case, the Ld. CIT(A) has grossly erred in upholding the unsecured loans of Rs. 9,00,000/- taken from Smt. Manju Devi Baid, Rashmi Baid, Subhadra Kumari Munot & Varsha Goyal as unexplained and have further erred in ignoring the evidences adduced and submissions made, thus the additions as made deserves to be deleted in toto.*

*2.1 That the Ld. CIT(A) has further erred in ignoring the confirmation along with PAN details submitted during the course of assessment proceedings and the fact that summons u/s 131 as issued were duly served and further the payment was received through banking channels. Hence the addition so confirmed deserves to be deleted."*

2. Regarding Ground No. 1, briefly stated, the facts of the case are that during the year under consideration, the assessee has purchased a piece of land from Smt. Teeja Devi situated at Village Chosla, Tehsil Nava, District Nagore for a total consideration of Rs. 29,60,000/- which was discharged in cash. Similarly, the assessee has purchased another immoveable property situated at Pipali Ka Bas, Teja Ka Bas, Phulera, Jaipur from Smt. Nana Devi for total consideration of Rs. 43,00,000/- out of which Rs. 1,00,000/- was paid in cash and the remaining Rs 42,00,000/- was paid through the account payee cheque. During the course of assessment proceedings, a show cause was issued by the Assessing Officer as to why the sum of Rs. 30,60,000/- paid in cash in respect of purchase of the aforesaid two immoveable properties should not be added to the income of the assessee in terms of provisions of section 40A(3) of the Act. In response, the assessee filed his submissions. After

considering the submissions of the assessee, the addition was made by the Assessing Officer which on appeal, has since been confirmed by the Id. CIT(A) and against the said findings, the assessee is in appeal before us.

3. During the course of hearing, the Id. AR submitted that in the case of first transaction of purchase of land from Smt. Teeja Devi, the seller was from a rural background and was not having any bank account and in support of the said fact, an affidavit of the assessee was filed during the course of assessment proceedings stating that in village-Chosla, where she was residing had no banking facilities. Further, in support of the same, a certificate of the Sarpanch dated 23.12.2016 was also filed before Assessing Officer wherein it was categorically stated that no bank branch was available in the entire Gram Panchayat of Chousala nor is available within 5 – 6 Kms surroundings of the village Chousala. Referring to the provisions of Rule 6DD, the Id A/R submitted that the rules clearly provided for exemption from the provisions of section 40A(3) of the Act where the payment is made to a person who resides in a village which is not served by any bank. It was submitted that the seller actually resided in Chosla-Village which is not disputed by lower authorities. It was submitted that the assessee had made payment out of his disclosed sources of funds which fact is again not doubted by both the lower authorities. Further, reference was drawn to the CBDT Circular No. 220 dated 31.05.1977 which provides that all the circumstances in which the conditions laid down in rule 6DD(j) would be applicable cannot be spelt out. However, some of these circumstances as spelt out in the said circular which would seem to meet the requirements of the said rule includes the transactions which are made at a place where either the purchaser or the seller doesn't have a bank account. It was accordingly submitted that case of the assessee is covered by exception provided under rule 6DD read with CBDT circular in so far as the seller did not have any bank account at all, say what about the place where transaction was

executed and thus disallowance made by Id. AO is not in accordance with law more particularly when genuineness of the transaction as well as identity of the seller was accepted beyond doubt. It was further submitted that in case of ITO vs. Shyam Apparels (P) Ltd. (supra) where the payment was made on Sunday, the Coordinate Bench has deleted the addition as the same was covered in exception and in the instant case as well, the payment was made on 18.08.2013 which happens to be Sunday and hence, covered under the exception which has not been appreciated by the lower authorities. In respect of second transaction executed with Smt. Nana Devi where out of total sale consideration of Rs. 43,00,000/- only an amount of Rs. 1,00,000/- was paid initially as advance money that too on being insisted by her as the deal was to be closed immediately and had assessee not paid the amount in cash immediately, she would have sold property to someone else. It was submitted that in respect of these transactions, sale agreement has been duly registered with Sub- Registrar and thus identity of the seller as well as genuineness of the transactions was proved beyond any doubt. Referring to the decisions of the Hon'ble Supreme Court in case of Attar Singh Gurmukh Singh Vs. ITO (1991) 191 ITR 667 (SC), it was submitted by the Id A/R that the Hon'ble Supreme Court has stated in the said decision that consideration of business expediency and other relevant factors are not excluded. Genuine and bona fide transactions are not taken out of the sweep of the section. It is open to the assessee to furnish to the satisfaction of the Assessing Officer the circumstances under which the payment in the manner prescribed in section 40A(3) was not practicable or would have caused genuine difficulty to the assessee. It was accordingly submitted that the provisions of section 40A(3) read with rule 6DD that they are intended to regulate business transactions and to prevent the use of unaccounted money. However, in the instant case, it is neither established by the lower authorities that there was any mala fide intention brought on record to prove that transaction was undertaken with the

intention to evade tax. In support, reliance was further placed on the decision of Hon'ble Rajasthan High Court in case of Smt. Harshila Chordia vs ITO [2008] 298 ITR 349 and the Co-ordinate Bench decisions in case of ITO vs. Shyam Apparels (P) Ltd. (ITA No. 497/JP/2016), Shree Salasar Overseas (P) LTD 66 DTR 9, M/s Daga Royal Arts, Jaipur vs. ITO, Jaipur (ITA No. 1065/JP/2016 dated 15.05.2018). It was accordingly submitted that the assessee has furnished sale deed/registered sale deed in respect of all the payments made, identity as well as genuineness of transaction is proved beyond doubt. Further, payments have been made by the assessee out of his disclosed sources of income, which is duly reflected in his regular books of accounts and were never doubted. It was accordingly submitted that the payments made by the assessee under business exigencies and exceptional circumstances and therefore are covered within Rule 6DD of Income Tax Rules, and thus disallowance of Rs. 30,60,000/- made by Assessing Officer needs to be deleted.

4. Per contra, the Id. D/R submitted that as regards the first transaction of purchase of land, per the sale deed, it is mentioned therein that the assessee has paid in cash a sum of Rs. 29,60,000/- to Smt. Teeja Devi on the date of execution of agreement dated 18.08.2013 and the said agreement has been executed in Jaipur. Therefore, the plea of the assessee that Rule 6DD comes to the rescue of the assessee cannot be accepted as the banking facilities are available in Jaipur. Further, the Id. D/R submitted the case law relied by the assessee in case of ITO vs. Shyam Apparels (P) Ltd. (supra) where the payment was made on Sunday and disallowance was deleted by the Tribunal is not applicable as in this case, the payment was not made on any holiday. Further, the reliance placed by the Id. A/R on decision in case of M/s Daga Royal Arts, Jaipur vs. ITO, Jaipur (supra) is against distinguishable as there was no business expediency as the transaction was made after 4 months of signing of the agreement. The Id. D/R supported the order of the lower authorities.

5. We have heard the rival contentions and perused the material available on record. There are two transactions for purchase of land which have been executed by the assessee during the year under consideration. During the course of assessment proceedings, the Assessing officer observed that in respect of first transaction for purchase of land, entire consideration has been discharged in cash and in respect of second transaction, part consideration has been discharged in cash and part in cheque and accordingly, he proceeded to invoke the provisions of section 40A(3) and has made the disallowance holding that the matter doesn't fall in exceptions as provided in Rule 6DD which on appeal has been confirmed by the Id CIT(A). During the course of hearing, the Id A/R has raised various contentions which are centred around the intention of the legislature behind introduction of section 40A(3), genuine and bonafide transactions not covered within the sweep of section 40A(3) and exceptions provided in Rule 6DD are not exhaustive and various authorities quoted in support thereof, the Coordinate Bench had an occasion to examine the same at length in case of **M/s A Royal Daga Arts vs ITO Ward-2(2), Jaipur** (supra) in light of decision of the Hon'ble Supreme Court in case of Attar Singh Gurmukh Singh vs. ITO and the decisions of various Hon'ble High Courts including the decisions of the Hon'ble jurisdictional High Court and the relevant findings read as under:

*"18. We have heard the rival contentions and perused the material available on record. It would be relevant to refer to the provisions of section 40A(3) of the Act which reads as under:*

*"(3) Where the 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 a bank or account payee bank draft exceeds twenty thousand rupees, no deduction shall be allowed in respect of such expenditure.*

*(3A) Where an allowance has been made in the assessment for any year in respect of any liability incurred by the assessee for any expenditure and subsequently during any previous year (hereinafter referred to as subsequent year) the assessee makes payment in respect thereof, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, the payment so made shall be deemed to be the profits and gains of business or profession and accordingly chargeable to income-tax as income of the subsequent year if the payment or aggregate of payments made to a person in a day, exceeds twenty thousand rupees:*

***Provided*** that no disallowance shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-section (3) and this sub-section where a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft exceeds twenty thousand rupees, in such cases and under such circumstances as may be prescribed, having regard to the nature and extent of banking facilities available, considerations of business expediency and other relevant factors :

***Provided further*** that in the case of payment made for plying, hiring or leasing goods carriages, the provisions of sub-sections (3) and (3A) shall have effect as if for the words "twenty thousand rupees", the words "thirty-five thousand rupees" had been substituted.

*(4) Notwithstanding anything contained in any other law for the time being in force or in any contract, where any payment in respect of any expenditure has to be made by an account payee cheque drawn on a bank or account payee bank draft in order that such expenditure may not be disallowed as a deduction under sub-section (3), then the payment may be made by such cheque or draft; and where the payment is so made or tendered, no person shall be allowed to raise, in any suit or other proceeding, a plea based on the ground that the payment was not made or tendered in cash or in any other manner."*

19. *The aforesaid provisions have to be considered and interpreted in light of various authorities which have been quoted at the Bar and relied upon by the Id AR and Id DR in support of their respective contentions.*

20. *In case of Attar Singh Gurmukh Singh v. ITO (supra), the matter which came up for consideration before the Hon'ble Supreme Court, the facts of the case were that assessee had made payment in cash exceeding a sum of Rs. 2,500/- for purchase of certain stock-in-trade. Payments were not allowed as deductions in the computation of income under the head "profits and gains of business or professions" as the same were held to be in contravention of section 40A(3) read with that 6DD of the Income rules. In that factual background, the question regarding validity of section 40A(3) and applicability of the said provisions to payment made for acquiring stock-in-trade came up for consideration before the Hon'ble Supreme Court.*

21. *The Hon'ble Supreme Court referring to the provisions of section 40A(3) and Rule 6DD and in particular, Rule 6DD(j), as existed at relevant point in time, has held as under:-*

"6. *As to the validity of section 40A(3), it was urged that if the price of the purchased material is not allowed to be adjusted against the sale price of the material sold for want of proof of payment by a crossed cheque or crossed bank draft, then the income-tax levied will not be on the income but it will be on an assumed income. It is said that the provision authorizing levy tax on an assumed income would be a restriction on the right to carry on the business, besides being arbitrary.*

7. *In our opinion, there is little merit in this contention. Section 40A(3) must not be read in isolation or to the exclusion of rule 6DD. The section must*

*be read along with the rule. If read together, it will be clear that the provisions are not intended to restrict the business activities. There is no restriction on the assessee in his trading activities. Section 40A(3) only empowers the Assessing Officer to disallow the deduction claimed as expenditure in respect of which payment is not made by crossed cheque or crossed bank draft. The payment by crossed cheque or crossed bank draft is insisted on to enable the assessing authority to ascertain whether the payment was genuine or whether it was out of the income from disclosed sources. The terms of section 40A(3) are not absolute. Consideration of business expediency and other relevant factors are not excluded. The genuine and bona fide transactions are not taken out of the sweep of the section. It is open to the assessee to furnish to the satisfaction of the Assessing Officer the circumstances under which the payment in the manner prescribed in section 40A(3) was not practicable or would have caused genuine difficulty to the payee. It is also open to the assessee to identify the person who has received the cash payment. Rule 6DD provides that an assessee can be exempted from the requirement of payment by a crossed cheque or crossed bank draft in the circumstances specified under the rule. It will be clear from the provisions of section 40A(3) and rule 6DD that they are intended to regulate the business transactions and to prevent the use of unaccounted money or reduce the chances to use black-money for business transactions. – Mudiam Oil Co. v. ITO [1973] 92 ITR 519 (AP). If the payment is made by a crossed cheque on a bank or a crossed bank draft, then it will be easier to ascertain, when deduction is claimed, whether the payment was genuine and whether it was out of the income from disclosed sources. In interpreting a taxing statute the Court cannot be oblivious of the proliferation of black-money which is under circulation in our country. Any restraint intended to curb the chances and opportunities to use or create black-money should not be regarded as curtailing the freedom of trade or business.”*

22. *Further, the Hon'ble Supreme Court upheld the applicability of section 40A(3) to payment made for acquiring stock-in-trade and raw materials and also affirmed the decision of Hon'ble Rajasthan High Court in case of Fakri Automobiles v. CIT [1986] 160 ITR 504 (Raj) to the effect that the payments made for purchasing stock-in-trade or raw material should also be regarded as expenditure for the purposes of section 40A(3) of the Act.*

23. *The Hon'ble Supreme Court has therefore upheld the constitutional validity of section 40A(3) of the Act and has held that the provisions are not intended to restrict the business activities and restraint so provided are only intended to curb the chances and opportunities to use or create black money and the same should not be regarded as curtailing the freedom of trade or business. The Hon'ble Supreme Court has thus laid great emphasis on the intention behind introduction of these provisions and it would therefore be relevant to examine whether in the present case, there is any violation of such intention and if ultimately, it is determined that such intention has been violated, then certainly, the assessee deserves the disallowance of the expenditure so claimed.*

24. *The Hon'ble Supreme Court referring to the provisions of section 40A(3) as existed at relevant point in time which talks about considerations of business expediency and other relevant factors and Rule 6DD(j) which provides for the exceptional or unavoidable circumstances and the fact that the payment in the manner aforesaid was not practical or would have caused genuine difficulty to the payee and furnishing the necessary evidence to the satisfaction of the Assessing Officer as to the genuineness of the payments and the identity of the payee has held that:*

*"The terms of section 40A(3) are not absolute. Consideration of business expediency and other relevant factors are not excluded. The genuine and bona fide transactions are not taken out of the sweep of the section. It is open to the assessee to furnish to the satisfaction of the Assessing Officer the circumstances under which the payment in the manner prescribed in section 40A(3) was not practicable or would have caused genuine difficulty to the payee. It is also open to the assessee to identify the person who has received the cash payment. Rule 6DD provides that an assessee can be exempted from the requirement of payment by a crossed cheque or crossed bank draft in the circumstances specified under the rule."*

25. Here, it is relevant to note that there has been no change in the provisions of section 40A(3) in so far as considerations of business expediency and other relevant factors are concerned, as existed at relevant point in time and as considered by the Hon'ble Supreme Court and the provisions of section 40A(3) as exist now and relevant for the impugned assessment year i.e. AY 2013-14. However, Rule 6DD(j) has been amended and by notification dated 10.10.2008, it now provides for an exception only in a scenario where the payment was required to be made on a day on which banks were closed either on account of holiday or strike. A question which arises for consideration is whether the legal proposition so laid down by the Hon'ble Supreme Court regarding consideration of business expediency and other relevant factors has been diluted by way of delegated legislation in form of Income Tax Rules when the parent legislation in form of section 40A(3) to which such delegated legislation is subservient has been retained in its entirety. Alternatively, can it be said that what has been prescribed as exceptional circumstances in Rule 6DD as amended are exhaustive enough and which visualizes all kinds and nature of business expediency in all possible situations.

26. *If we look at the legislative history of section 40A(3) and Rule 6DD, we find that initially, section 40A(3) provides for disallowance of 100% of the expenditure unless the matter falls under exception as provided in Rule 6DD(j) Later on, section 40A(3) has been amended to provide for disallowance of 20% of the expenditure incurred in cash and Rule 6DD(j) was omitted. Thereafter, by virtue of another amendment, disallowance under section 40A(3) was increased from 20% to 100%, however, Rule 6DD(j) was not reintroduced in original form to provide for exceptional and unavoidable circumstances rather it was restricted to payment by way of salary to employees and thereafter, by virtue of latest amendment in year 2008 to payments made on a day on which the banks were closed on account of holiday or strike.*

27. *We do not believe that by virtue of these amendments, the legal proposition so laid down by the Hon'ble Supreme court regarding consideration of business expediency and other relevant factors has been diluted in any way. At the same time, we also believe that Rule 6DD as amended are not exhaustive enough and which visualizes all kinds and nature of business expediency in all possible situations and it is for the appropriate authority to examine and provide for a mechanism as originally envisaged which provides for exceptional or unavoidable circumstances to the satisfaction of the Assessing officer whereby genuine business expenditure should not suffer disallowance.*

28. *Further, the Courts have held from time to time that the Rules must be interpreted in a manner so as to advance and not to frustrate the object of the legislature. The intention of the legislature is manifestly clear and which is to curb the chances and opportunities to use or create black money and to ascertain whether the payment was genuine or whether it was out of the income from disclosed sources. And Section 40A(3) continues to provide that*

*no disallowance shall be made in such cases and under such circumstances as may be prescribed having regard to the nature and extent of the banking facilities available, consideration of business expediency and other relevant factors. In our view, given that there has been no change in the provisions of section 40A(3) in so far as consideration of business expediency and other relevant factors are concerned, the same continues to be relevant factors which needs to be considered and taken into account while determining the exceptions to the disallowance as contemplated under section 40A(3) of the Act so long as the intention of the legislature is not violated. We find that our said view find resonance in decisions of various authorities, which we have discussed below and thus seems fortified by the said decisions.*

29. *We refer to the decision of the Hon'ble Rajasthan High Court in case of Smt. Harshila Chordia vs. ITO (supra), where the facts of case were that the assessee had made certain cash payments towards purchase of scooter/mopeds which exceeded Rs. 10,000/- in each case to the principal agent instead of making payment through the cross cheques or bank draft. The Assessing Officer invoked the provisions of section 40A(3) and held that they were no exceptional circumstances falling under rule 6DD which could avoid consequences of the provisions of section 40A(3) of the Act. The Id. CIT(A) held that such exceptional circumstances did exist. However, the findings of the Id. CIT(A) were reversed by the Tribunal and the matter came up for consideration before the Hon'ble High Court.*

30. *The Hon'ble High Court observed that the principal reason which weighed with the Tribunal in discarding the explanation furnished by the assessee was that the case of the assessee did not fall in any of the clauses enumerated in the circular issued by the CBDT about the explanatory note appended to clause (j) was to operate as it was existing at the relevant time*

*and enumerated circumstances in the circular was exhaustive of exceptional circumstances. The Hon'ble High Court observed that the Tribunal has erroneously assumed that enumeration of instances in the circular in which the provisions of clause (j) under rule 6DD would operate to be exhaustive of such circumstances and had not been properly understood its implication. It was further observed by the Hon'ble High Court that primary object of enacting section 40A(3) in its original incarnation was two-fold, firstly, putting a check on trading transactions with a mind to evade the liability to tax on income earned out such transaction and, secondly, to inculcate the banking habits amongst the business community. The consequence which was provided was to disallow of deduction of such payments/expenses which were not through bank either by crossed cheques or by demand draft or by pay order. It was further held by the Hon'ble High Court that:*

*".....Apparently, this provision was directly related to curb the evasion of tax and inculcating the banking habits. Therefore, the consequences, which were to befall on account of non-observation of sub-section (3) of section 40A must have nexus to the failure of such object. Therefore the genuineness of the transactions and it being free from vice of any device of evasion of tax is relevant consideration which has been overlooked by the Tribunal.*

*31. It was accordingly held by the Hon'ble High Court that it is the relevant consideration for the assessing authority under the Income Tax Act that before invoking the provisions of section 40A(3) in light of Rule 6DD as clarified by circular of the CBDT that whether the failure on the part of the assessee in adhering to requirement of provisions of section 40A(3) has any such nexus which defeats the object of provision so as to invite such a consequence. This is particularly so, because the consequence provided u/s 40A(3) for failure to make payments through bank is not absolute in terms nor automatic but*

*exceptions have been provided and leverage has been left for little flexing by making a general provision in the form of clause (j) in rule 6DD. Thereafter, the Hon'ble High Court refers to the clause 6DD(j) and the circular dated 31<sup>st</sup> May, 1977 issued by the Board in the context of what shall constitute exceptional and unavoidable circumstances within the meaning of section Clause (j). The Hon'ble High Court observed that the circular in paragraph 5 gives a clear indication that rule 6DD(j) has to be liberally construed and ordinarily where the genuineness of the transaction and the payment and the identity of the receiver is established, the requirement of rule 6DD(j) must be deemed to have been satisfied. The Hon'ble High Court observed that apparently section 40A(3) was intended to penalize the tax evader and not the honest transactions and that is why after framing of rule 6DD(j), the Board stepped in by issuing the aforesaid circular and this clarification, in our opinion, is in conformity with the principle enunciated by the Supreme Court in CTO vs. Swastik Roadways reported in [2004] 2 RC 539; [2004] 3 SCC 640.*

*32. The legal proposition that arises from the above decision of the Hon'ble Rajasthan High Court is that the consequences, which were to befall on account of non-observation of sub-section (3) of section 40A must have nexus to the failure of such object. Therefore the genuineness of the transactions and it being free from vice of any device of evasion of tax is relevant consideration and which should be examined before invoking the rigours of section 40A(3) of the Act.*

*33. In case of Anupam Tele Services v. Income Tax Officer, the matter which came up for consideration before the Hon'ble Gujarat High Court, the facts of the case were that the assessee who is involved in the business of distribution mobile and recharge vouchers of Tata Tele Services Ltd had made payment of Rs. 33,10,194/- to Tata Tele Services Ltd., by cash on different dates. The*

*assessee had made such payment through account payee cheques till 22<sup>nd</sup> Aug, 2005, when a circular was issued by Tata Tele Services Ltd., requiring the appellant to deposit cash at the company's office at Surat. In that factual background, the Hon'ble High Court held as under:-*

*"17. Rule 6DD of the IT Rules, 1962 provides for situations under which disallowance under s. 40A(3) shall not be made and no payment shall be deemed to be the profits and gains of business or profession under the said section. Amongst the various clauses, cl. (j) which is relevant, read as under:*

*(j) where the payment was required to be made on a day on which the banks were closed either on account of holiday or strike;*

*18. It could be appreciated that s. 40A and in particular sub-cl. (3) thereof aims at curbing the possibility of on-money transactions by insisting that all payments where expenditure in excess of a certain sum (in the present case twenty thousand rupees) must be made by way of account payee cheque drawn on a bank or account payee bank draft.*

*19. As held by the Apex Court in case of Attar Singh Gurmukh Singh (supra). "...In our opinion, there is little merit in this contention. Sec. 40A(3) must not be read in isolation or to the exclusion of r. 6DD. The section must be read along with the rule. If read together, it will be clear that the provisions are not intended to restrict the business activities. There is no restriction on the assessee in his trading activities. Sec. 40A(3) only empowers the A.O. to disallow the deduction claimed as expenditure in respect of which payment is not made by crossed cheque or crossed bank draft. The payment by crossed cheque or crossed bank draft is insisted on to enable the assessing authority to ascertain whether the payment was genuine or whether it was out of the income from undisclosed sources, The terms of s. 40A(3) are not absolute. Considerations of business expediency and other*

*relevant factors are not excluded. Genuine and bona fide transactions are not taken out of the sweep of the section. It is open to the assessee to furnish to the satisfaction of the A.O. the circumstances under which the payment in the manner prescribed in s. 40A(3) was not practicable or would have caused genuine difficulty to the payee. It is also open to the assessee to identify the person who has received the cash payment. Rule 6DD provides that an assessee can be exempted from the requirement of payment by a crossed cheque or crossed bank draft in the circumstances specified under the rule. It will be clear from the provisions of s. 40A(3) and r. 6DD that they are intended to regulate business transactions and to prevent the use of unaccounted money or reduce the chances to use black money for business transactions:”*

*20. It was because of these considerations that this Court in case of Hynoup Foods (P.) Ltd. (supra) observed that the genuineness of the payment and the identify of the payee are the first and foremost requirements to invoke the exceptions carved out in r. 6DD(j) of the IT Rules,1962.*

*21. In the present case, neither the genuineness of the payment nor the identity of the payee were in any case doubted. These were the conclusions on facts drawn by the CIT(A). The Tribunal also did not disturb such facts but relied solely on r. 6dd(j) of the rules to hold that since the case of the assessee did not fall under the said exclusion clause nor was covered under any of the clauses of r. 6DD, consequences envisaged in s. 40A(3) of the Act must follow.*

*22. In our opinion, the Tribunal committed an error in coming to such a conclusion. We would base our conclusions on the following reasons:*

*(a) The paramount consideration of section 40A(3) is to curb and reduce the possibilities of black money transactions. As held by the Supreme Court*

*in Attar Singh Gurmukh Singh (supra), section 40A(3) of the Act does not eliminate considerations of business expediencies.*

*(b) In the present case, the appellant assessee was compelled to make cash payments on account of peculiar situation. Such situation was as follow-*

*(i) the principal company, to which the assessee was a distributor, insisted that cheque payment from a co-operative bank would not do, since the realization takes a longer time;*

*(ii) the assessee was, therefore, required to make cash payments only;*

*(iii) Tata Tele Services Ltd. assured the assessee that such amount shall be deposited in their bank account on behalf of the assessee;*

*(iv) It is not disputed that the Tata Tele Services Ltd. did not act on such promise;*

*(v) if the assessee had not made cash payment and relied on cheque payments alone, it would have received the recharge vouchers delayed by 4/5 days and thereby severely affecting its business operations.*

*We would find that the payments between the assessee and the Tata Tele Services Ltd. were genuine. The Tata Tele Services Ltd. had insisted that such payments be made in cash, which Tata Tele Services Ltd. in turn assured and deposited the amount in a bank account. In the facts of the present case, rigors of s. 40A(3) of the Act must be lifted.*

*23. We notice that the Division Bench of the Rajasthan High Court in case of Smt. Harshila Chordia vs. ITO (2007) 208 CTR (Raj) had observed that the exceptions contained in r. 6DD are not exhaustive and that the said rule must be interpreted liberally."*

34. *In case of M/s Ajmer Food Products Pvt. Ltd., Ajmer vs. JCIT (supra), a similar issue has come up before the Co-ordinate Bench and speaking through one of us, it was held as under:*

*"4.5 The genuineness of the transaction as well as the identity of the payee are not disputed. Further, the appellant has explained the business expediency of making the cash payments to both the parties which has not been controverted by the Revenue. Following the decision of Gujarat High Court in case of Anupam Tele Services (supra) and Rajasthan High Court in case of Harshila Chordia (supra), the addition of Rs. 45,738/- under section 40A(3) is deleted."*

35. *In case of Gurdas Garg vs. CIT(A), Bathinda (supra), the matter which came up for consideration before the Hon'ble Punjab & Haryana High Court, the facts of the case are pari materia to the instant case and the ratio of the said decision clearly applies in the instant case. In that case, the facts of the case were that the assessee was engaged in trading in properties and during the course of assessment proceedings, the AO observed that there are transactions where the payments have been made in excess of Rs. 20,000/- in cash which were disallowed u/s 40A(3) of the Act. The Hon'ble High Court held that rule 6DD(j) is not exhaustive of the circumstances in which the proviso to section 40A(3) is applicable and it only illustrative. The Hon'ble High Court refers to the decision of the Hon'ble Rajasthan High Court in case of Smt. Harshila Chordia v. ITO (Supra) and the decision of Hon'ble Supreme Court in case of Attar Singh Gurmukh Singh v. ITO (Supra). The High Court further observed that the Id. CIT(A) has given a finding that the identity of the payee i.e. vendors in respect of land purchase by the appellant was established, the sale deeds were produced, the genuineness thereof was accepted and the amount paid in respect of each of these agreement was satisfied before the*

*Stamp Registration Authority and the transactions were held to be genuine and the bar against the grant of deductions u/s 40A(3) of the Act was not attracted. The Hon'ble High Court further observed that the Tribunal did not upset these findings including as to the genuineness and the correctness of the transactions and it is also important to note that the Tribunal noted the contention on behalf of the appellant that there was a boom in the real estate market and therefore it was necessary, therefore, to conclude the transactions at the earliest and not to postpone them; that the appellant did not know the vendors and obviously therefore, insisted for payment in cash and that as a result thereof, payments had to be made immediately to settle the deals. The Tribunal did not doubt this case. The Tribunal, however, held that the claim for deduction was not sustainable. In view of Section 40A(3) as the payments which were over Rs. 20,000/- were made in cash. The Hon'ble High Court accordingly observed that "the Tribunal has not disbelieved the transactions or the genuineness thereof nor has it disbelieved the fact that payments having been made. More importantly, the reasons furnished by the appellant for having made the cash payments, which we have already adverted to, have not been disbelieved. In our view, assuming these reasons to be correct, they clearly make out a case of business expediency."*

36. *The Co-ordinate Bench in case of M/s Dhuri Wine vs DCIT (ITA No. 1155/chd/2013 & others dated 09.10.2015) has held that the proposition so laid down by the Hon'ble High Court in case of Gurdas Garg (supra) is quite unambiguous to the effect that even if the case of the assessee does not fall in any of the clauses of Rule 6DD of the Income Tax Rules, invoking the provisions of section 40A(3) of the Act can be dispensed with if the assessee is able to prove the business expediency because of which it has to make the cash payments, the genuineness of the transactions have also to be verified.*

37. *The Co-ordinate Bench in case of Rakesh Kumar vs. ACIT (ITA No. 102(Asr)/2014 dated 09.03.2016) relying on the decision of Hon'ble Punjab and Haryana High Court in case of Gurdas Garg (supra) has held that the genuineness of the payment has not been doubted as the Assessing Officer himself has held that sale deeds of properties were registered with the Revenue department of the Government. Therefore, following the decision of Hon'ble Punjab and Haryana High Court, the payment for purchase of land was allowed.*

38. *We further note that in case of M/s ACE India Abodes limited (DB Appeal No. 45/2012 dated 11.09.2017), a similar issue has come up before the Hon'ble Rajasthan High Court regarding payment for purchase of land from various agriculturist for which the assessee has paid consideration in cash and shown the land as its stock-in-trade. The Hon'ble Rajasthan High Court referring to the intent behind introduction of section 40A(3) and catena of decisions right from Attar Singh Gurmukh Singh, Smt. Harshila Chordia, Gurdas Garg, Anupam Tele Services referred supra has decided the issue in favour of the assessee and against the department.*

39. *The issue which is being disputed before us has to be considered and decided in light of facts on record and the legal position which emerges from the above referred decisions. The facts of the case are that during the year under consideration, the assessee firm has purchased 26 pieces of plot of land in the month of April and May, 2012 from various persons for a total consideration of Rs. 2,46,28,425/-, out of which payment amounting to Rs. 1,71,67,000/- were made in cash to various persons, payment amounting to Rs. 59,48,920/- were made in cheque to various persons, and Rs. 8,15,700/- and Rs. 6,84,296/- were paid in cash towards stamp duty and court fee respectively. During the course of assessment proceedings, the assessee*

*submitted copies of the sale deed, the particulars of which find mention on page 7 and 8 of the assessment order. On perusal of the said details, it is observed that the said details contains the name of the seller, date of sale deed, plot no., purchase value, stamp duty, Court fee and mode of payment – cash/cheque. Therefore, as far as the identity of the persons from whom the purchases have been made and genuineness of the transactions of purchase of various plots of land and payment in cash is concerned, the same is evidenced by the registered sale deeds and there is no dispute which has been raised by the Revenue either during the assessment proceedings or before us. The identity of the sellers and genuineness of the transactions is therefore fully established in the instant case.*

*40. From perusal of the assessment order, it is further noted that the AO, on perusal of the details of the properties purchased, as per copies of the sale deed furnished, held that the assessee had made cash payments regularly and no specific circumstances have been brought to his knowledge that the cash payments were made due to some unavoidable circumstances. It was held by the AO that maximum cash payments were made to persons residing in Jaipur city and in single family, repeated cash payments were made which itself shows that there were no unavoidable circumstances to make cash payments to the sellers. What is therefore relevant to note that the AO has appreciated the necessity of determining the unavoidable circumstances which could have led the assessee to make cash payments. During the course of assesment proceedings, it was submitted by the assessee that the payment for purchase of land has been made in cash because the sellers were new to the assessee and refused to accept the cash. It was submitted that the delay in making the cash payment, it could have lost the land deals. In this regard, the Id AR submitted before us that the assessee had purchased the lands both through cash and cheques. Based on the requirement of the seller, assessee had selected the mode of payment. For the sellers, who had insisted the payments*

*in cash, assessee had withdrawn the cash from bank on the same date of registry and made the payments to seller accordingly. The withdrawals from bank and payments to seller have been tabulated below as per dates below:-*

Date	Bank		Grand Total	Cumulative balance	Utilization		Net Balance
	ICICI Bank	Yes Bank			Date	Amount	
							18,00,000
5-Apr-12	14,50,000	3,50,00	18,00,000	18,00,000			5,07,00
9-Apr-12	-	9,00,000	9,00,000	27,00,000	9-Apr-12	21,93,000	3,34,000
11-Apr-12	-	2,00,000	2,00,000	29,00,000	11-Apr-12	3,73,000	3,34,000
12-Apr-12	-	-	-	29,00,000	-	-	3,34,000
13-Apr-12	-	-	-	29,00,000	-	-	11,97,100
19-Apr-12	-	30,00,000	30,00,000	59,00,000	23-Apr-12	21,36,900	11,57,000
24-Apr-12	30,00,000	25,00,000	55,00,000	1,14,00,000	24-Apr-12	55,40,100	11,57,000
25-Apr-12	-	-	-	1,14,00,000	-	-	11,57,000
30-Apr-12	-	-	-	1,14,00,000	-	-	11,57,000
4-May-12	-	-	-	1,14,00,000	-	-	11,57,000
7-May-12	-	-	-	1,14,00,000	-	-	11,57,000
8-May-12	19,00,000	23,00,000	42,00,000	1,56,00,000	8-May-12	38,55,000	15,02,000
12-May-12	-	-	-	1,56,00,000	-	-	15,02,000
14-May-12	-	-	-	1,56,00,000	-	-	15,02,000
15-May-12	-	-	-	1,56,00,000	-	-	15,02,000
16-May-12	-	15,00,000	15,00,000	1,71,00,000	-	-	30,02,000
17-May-12	-	15,00,000	15,00,000	1,86,00,000	17-May-12	30,69,000	14,33,000
Total	63,50,000	1,42,50,000	1,86,00,000			1,71,67,000	

41. *It was submitted by the Id AR that in order to secure the deal, assessee had no other option but to make the payment in cash. Cash payments were made from the disclosed sources being the amount withdrawn from bank. It was for sheer insistence of the seller that the payments were made in cash. Had the assessee denied the cash payment looking to the provisions of sections 40A(3), the deal could not have been finalized. In such circumstances, in the business interest and to complete the deal, the assessee had chosen to make the payments in cash fortified through registered sale deed. The payment has been made out of the explained sources, through the registered document and as a disclosed transaction.*

42. *We find force in the contentions so raised by the Id AR. The transactions have been executed by the assessee within a span of one and half month and there are transactions where the payment has been made through cheque and there are transactions where the payment has been made through cash. The said contentions are supported by the fact that on the same day, there are cash and cheque payments as evidenced from the details of the transactions appearing at page 7 and 8 of the assessment order. It is therefore clear that the assessee was having sufficient bank balance and only at the insistence of the specific sellers, the assessee has withdrawn cash and made payment to them and wherever, the seller has insisted on cheque payments, the payment has been made by cheque. This makes out a case that the assessee has business expediency under which it has to make payment in cash and in absence of which, the transactions could not be completed. The second proviso to section 40A(3) refers to "the nature and extent of banking facility, consideration of business expediency and other relevant factors" which means that the object of the legislature is not to make disallowance of cash payments which have to be compulsory made by the assessee on account of business expediency. Further, the source of cash payments is clearly identifiable in form of the withdrawals from the assessee's bank accounts and the said details were*

*submitted before the lower authorities and have not been disputed by them. It is not the case of the Revenue either that unaccounted or undisclosed income of the assessee has been utilised in making the cash payments.*

*43. In the entirety of facts and circumstances of the case and respectfully following the legal proposition laid down by the various Courts and Coordinate Benches referred supra, we are of the view that the identity of the persons from whom the various plots of land have been purchased and source of cash payments as withdrawals from the assessee's bank account has been established. The genuineness of the transaction has been established as evidenced by the registered sale deeds and lastly, the test of business expediency has been met in the instant case. Further, as held by the Hon'ble Rajasthan High Court in case of Harshila Chordia (supra), the consequences, which were to befall on account of non-observation of sub-section (3) of section 40A must have nexus to the failure of such object. Therefore the genuineness of the transactions and it being free from vice of any device of evasion of tax is relevant consideration. The intent and the purpose for which section 40A(3) has been brought on the statute books has been clearly satisfied in the instant case. Therefore, being a case of genuine business transaction, no disallowance is called for by invoking the provisions of section 40A(3) of the Act."*

6. In the instant case, we find that the identity of the persons namely Smt Teja Devi and Smt Nana Devi from whom the purchase of land have been made by the assessee has been established and the source of cash payments is duly reflected in assessee's regular books of accounts and the said details were submitted before the lower authorities and have not been disputed by them. It is not the case of the Revenue that any unaccounted or undisclosed income of the assessee has been utilised in making the cash payments. The genuineness and the bonafide of both the transactions have been established as evidenced

by sale deeds and assessee's books of accounts wherein the transaction particulars have been duly reflected. In terms of business expediency, the assessee has explained that the seller Smt Teeja Devi is a resident of village Chosla which has no banking facility and therefore, she doesn't had an occasion to open any bank account in absence of any bank and in fact, she doesn't have any bank account opened and maintained in her name as on the date of execution of the sale deed and therefore, in such circumstances, the assessee had no option but to discharge the sale consideration in cash. In support, the Id A/R has submitted the affidavit of the assessee as well as a confirmation issued by the Sarpanch which remain uncontroverted before us. We therefore find that where the seller resides in a village which doesn't have a banking facility and therefore, the seller doesn't have a bank account in her name and both the parties agree to execute a sale deed for sale and purchase of land and the consideration is discharged in cash, it is clearly a case of business expediency which has necessitated the assessee who wants to acquire the said piece of land to discharge the sale consideration in cash due to lack of formal banking facility and in absence of any bank account in name of the seller. Further, we find that sale deed has been executed on 18.8.2013 and the payment has been made on the said date which happens to be Sunday and thus a bank holiday again necessitating the payment in cash coupled with the fact that the seller doesn't have a bank account. Similarly, in respect of second sale transaction, the test of business expediency has been met as the initial/advance payment of Rs 1 lac as insisted by the seller has only been made in cash to secure the transaction and rest all payments have been made through cheque. As held by the Hon'ble Rajasthan High Court in case of Smt. Harshila Chordia (supra), the consequences, which were to befall on account of non-observation of sub-section (3) of section 40A must have nexus to the failure of such object. Therefore the genuineness of the transactions and it being free from vice of any device of evasion of tax is relevant consideration for which section 40A(3) has been brought on the statute books and which has

been satisfied in the instant case. Similar view has been taken by the Hon'ble Rajasthan High Court in its subsequent decision in case of CIT vs Solutions reported in 80 Taxmann.com 246 wherein it was held as under:

*"11. The Appellate Authorities have relied upon the judgment rendered in the case of Attar Singh Gurmukh Singh v. ITO [1991] 191 ITR 667/59 Taxman 11 (SC), where the hon'ble apex court has observed as under (page 673) :*

*"The terms of section 40A(3) are not absolute. Consideration of business expediency and other relevant factors are not excluded.*

*Genuine and bona fide transactions are not taken out of the sweep of the section. It is open to the assessee to furnish to the satisfaction of the Assessing Officer the circumstances under which the payment in the manner prescribed in section 40A(3) was not practicable or would have caused genuine difficulty to the payee. It is also open to the assessee to identify the person who has received the cash payment. Rule 6DD provides that an assessee can be exempted from the requirement of payment by a crossed cheque or crossed bank draft in the circumstances specified under the rule. It will be clear from the provisions of section 40A(3) and rule 6DD that they are intended to regulate business transactions and to prevent the use of unaccounted money or reduce the chances to use black money for business transactions."*

*12. The aforesaid observation does apply in the instant case. The Assessing Officer on the facts noticed has been unable to make out a case of involvement of unaccounted money.*

*13. It is also a finding of fact recorded by the Commissioner of Income-tax (Appeals) that copies of the ledger accounts were produced before the Assessing Officer who has not found any discrepancy in such books of account and no unaccounted transaction has been reported/noticed by the Assessing Officer."*

7. In the entirety of facts and circumstances of the case and respectfully following the legal proposition laid down by the Courts including that of the Jurisdictional High Court and of the Coordinate Benches in various cases referred supra, no disallowance is called for under section 40A(3) of the Act and the same is directed to be deleted. In the result, the ground of the assessee's appeal is allowed.

8. Now coming to Ground No. 2 of the assessee's appeal relating to addition of Rs 9 lacs in respect of unsecured loans taken by the assessee.

9. In this regard, the Id. AR submitted that during the course of assessment proceedings, Id. AO had directed the assessee to furnish details of unsecured loans. In response to which, assessee furnished confirmations of all the parties alongwith complete name, addresses, tax details, etc. The Id.AO then further issued summons u/s 133(6) for verifying the loans taken by the assessee during the year. In response to which most of the parties furnished necessary documents as desired by Id. AO. However, only four parties failed to comply with summons and Id. AO thus concluded that assessee has failed to prove identity, genuineness and creditworthiness of such lenders and made the addition of Rs.9,00,000/- which stood confirmed by Id. CIT(A) in respect of following parties.

S. No.	Name of party	Amount
1.	Manju Devi Baid	2,50,000/-
2.	Rashmi Baid	2,50,000/-
3.	Varsha Goyal	3,00,000/-
4.	Subhadhra Kumari Munot	1,00,000/-

10. It was submitted that during the course of assessment proceedings, assessee has submitted necessary documentation in support of identity of the creditors by filing the confirmations of all the parties, wherein PAN as well as complete address of the parties was mentioned, and genuineness and

creditworthiness of the transactions has also been proved since summons were duly served upon all the parties and none of them had denied the fact that they have lent money to the assessee. Also all the loans were received through banking channels and all the creditors were regular taxpayers.

11. As regards non- appearance of the four creditors stated above, it was submitted that common men always hesitate in appearing before Income Tax Department for the fear of getting into unnecessary litigation. It is also a matter of fact that the assessee being a borrower always has the subdued position and could not compel/pursue the lender for physical appearance or give any further documents as asked for or file the necessary documents again, more particularly when they had already furnished confirmation of loan, their PAN and complete address through AR of assessee. It is further submitted that since they are assessed to tax, their creditworthiness could also not be doubted more particularly when the assessee had paid interest after deduction of tax at source and necessary returns of TDS were also filed before Id. AO. In this regard, reliance was placed on the Co-ordinate Bench decision in the case of Umbrella Projects Pvt. Ltd. vs. ITO (ITA No. 5944/Del/2014) in support of the proposition that no adverse inference can be drawn against the assessee merely because the reply to notices issued u/s 133(6) have not been complied with. It was accordingly submitted that addition made by the AO solely for non-compliance to notice u/s 131 deserve to be deleted more particularly where the summons were duly served and amount was transacted through banking channels and the lenders were duly assessed to tax.

12. Per contra, the Id. DR submitted that during the course of assessment proceedings, the summons were issued to the parties u/s 131(1) but none of the parties attended nor any reply was received from the said parties. The assessee was also asked to produce the parties and established the credit-

worthiness of the parties and genuineness of the transactions. The assessee only furnished confirmation of one party Subhadra Kumari Munot but in this case also, no bank statement and income tax return were produced. Hence, the credit worthiness and genuineness of the cash creditors remained unverified and the addition have been rightly made by the Assessing Officer u/s 68 and which has been confirmed by the Id. CIT(A). She accordingly supported the findings of the lower authorities.

13. We have heard the rival contentions and perused the material available on record. The assessee is in business of real estate and financing and during the year under consideration, there are unsecured loan transactions to the tune of Rs 13,64,34,000/-. During the course of assessment proceedings, the AO desired to verify these loan transactions and in response, necessary confirmations of all the loan transactions containing name, address, PAN number, amount of loan advanced, rate of interest, payment of interest and TDS on such interest, etc were submitted before the AO. The same were taken on record by the AO and to carry out further verification, the AO issued notices u/s 133(6) and in response, all parties except six parties responded to the said notices and no adverse view was taken by the AO in respect of these parties who had responded to the notices u/s 133(6) of the Act. In respect of remaining six parties to whom the notices were issued u/s 133(6) and who have not responded, the assessee was again asked to submit details. The assessee thereafter reached out to these six parties and two of them responded and necessary details were submitted and in respect of remaining four parties, the AO proceeded and made addition u/s 68 holding them as not satisfactory explained. We therefore find that where the parties to whom the notices were issued u/s 133(6) and who have chosen not to respond as the notices didn't returned unserved, the AO has proceeded to make the addition in the hands of the assessee and the parties which have responded to such

notices, the AO has accepted the transactions as genuine and no addition has been made in the hands of the assessee. We therefore find that merely on account of non- receipt of response to notices u/s 133(6) from these parties, the additions has been made by the AO. The AO has not doubted the details and other particulars so submitted by the assessee in respect of these parties. The assessee has submitted name and address of these parties, their PAN numbers, the amount received through banking channel, the quantum of unsecured loan, the rate of interest paid on such loan transactions and TDS done on such interest payments and necessary confirmation of these parties have been submitted wherein they have acknowledged the transaction and the outstanding balance in their respective loan accounts. We find that similar details were furnished in respect of other loan transactions and which have been accepted by the Assessing officer and therefore, there cannot be a different benchmark in terms of examining these transactions unless there is something adverse which is noticed by the Assessing officer. The notices have been duly served on these parties and therefore, it is not a case where wrong name and address have been furnished by the assessee. Where the assessee is in the financing business and there are loan transactions to the tune of Rs 13.64 crores in respect of which necessary details and other confirmations have been filed and the notices have been responded, then merely because 4 persons having transactions worth Rs 9 lacs, having received the notices, chosen not to respond to the said notices cannot be held against the assessee. It is not the case of the Revenue either that the confirmations of these parties so furnished during the course of assessment proceedings are either false or have been forged. Once these confirmations have been accepted and the transactions have been executed by the assessee as part of its normal financing business through banking channel and the transactions carry the necessary attributes of a loan transaction where the AO has taken into consideration the confirmation and other details submitted by the

assessee, no adverse view can be taken against the assessee as the onus cannot be shifted back to the assessee in absence of any adverse findings on record in terms of documentation so submitted by the assessee. Given that these are existing income tax assesseees, there is nothing on record that the AO has taken any further steps in terms of issuing summons u/s 131 or reaching out to jurisdictional officers for verifying their tax records, etc. Similar view has been taken by the Coordinate Bench in case of **Umbrella Projects Pvt Ltd** (supra) wherein the relevant findings are contained at Para 10 which read as under:

*"10. In view of the above documents and evidences filed by the assessee, we are of the opinion that these are sufficient to discharge its initial onus regarding the identity, creditworthiness and genuineness as required under Section 68 of the Act. The assessee having discharged its onus, it was upon the AO to bring material or evidence to discredit the same. In the present case, from the assessment order, it is evident that no adverse material is available with the AO. There is no allegation against any of the above 4 shareholders of doing anything wrong on record. The AO has drawn adverse inference as he did not receive reply from the 4 aforesaid shareholders in response to notice issued by him under Section 133(6). On this issue, firstly, the Ld. AR has drawn our attention to the replies along with evidences submitted by these 4 shareholders to the AO to discredit the allegation of the AO that he did not receive reply in response to notice issued by him under Section 133(6). De horse the non-receipt of the reply, even for the sake of argument we assume that the AO has not received the reply, still the fact remains that 133(6) notice were served on these four shareholders. On going through the assessment order we note that it is not the case of the AO that notices have come back unserved or these shareholders were*

*not available at the address given by the assessee. If that be so, we are of the view that no adverse inference can be drawn against the assessee merely because reply has not been received by the AO in response to notice issued under Section 133(6), but merely non-receipt of reply can be a justification for drawing adverse inference. Our this view is supported by the judgment of the Hon'ble Supreme Court in the case of CIT vs. Orissa Corporation 159 ITR 78 where a similar issue has come up. The finding of the Hon'ble Court in this regard reads as under:-*

*"In this case, the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assesseees. Their index numbers were in the file of the Revenue. The Revenue, apart from issuing notices under section 131 at the instance of the assessee, did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were creditworthy or were such who could advance the alleged loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do anything further. In the premises, if the Tribunal came to the conclusion that the assessee has discharged the burden that lay on him, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion is based on some evidence on which a conclusion could be arrived at, no question of law as such arises."*

14. In the result, the addition so made by the AO and confirmed by the Id CIT(A) is hereby set-aside and the ground of appeal is allowed in favour of the assessee.

In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 11/11/2020.

Sd/-  
( संदीप गोसाई )  
(Sandeep Gosain)  
न्यायिक सदस्य / Judicial Member

Sd/-  
(विक्रम सिंह यादव)  
(Vikram Singh Yadav)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 11/11/2020

\*Ganesh Kr.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Ravinder Kumar Sharma, Jaipur
2. प्रत्यर्थी / The Respondent- The DCIT, Circle-07, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 1077/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

