

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "A", MUMBAI**

BEFORE SHRI RAJESH KUMAR (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 442/MUM/2019
Assessment Year: 2014-15**

M/s Arihant Traders, F-149, APMC Onion Potato Market, Turbhe, Vashi, Navi Mumbai - 400705 PAN: AAXFA3575F	Vs.	The Asstt. Commissioner of Income Tax – 28 (1), Room No. 306, 3 rd Floor, Tower No. 6, Vashi Railway Station Complex, Vashi Navi Mumbai - 400703
(Appellant)		(Respondent)

Assessee by : Ms. Ritika Agarwal (AR)
Revenue by : Shri Michael Jerald (DR)

Date of Hearing: 25/09/2020
Date of Pronouncement: 05/11/2020

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the assessee against the order dated 11.01.2019 passed by the Commissioner of Income Tax (Appeals)-26 (for short 'the CIT(A) Mumbai, for the assessment year 2014-15, whereby the Ld. CIT(A) has partly allowed the appeal filed by the assessee against the assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short the 'Act').

2. Brief facts of the case are that the assessee firm having income from business, filed its return of income for the assessment year under consideration declaring total income at Rs. 51,18,155/-. Since, the case was selected for scrutiny, the AO issued notice u/s 143 (2) and 142 (1) of the Act. In response thereof Shri Nitin Parekh, partner attended from time to time and filed the details called for. It was noticed that during the year relevant to the assessment year under consideration, the assessee had made payments to the transporters in cash under the heading transportation (inward) in its ledger accounts. Accordingly, AO asked the assessee to show cause as to why the

amount of Rs. 5,52,455/- should not disallowed u/s 40A(3) of the Act. The assessee contended that the amount paid to the transporters forms the part of the amount payable to the farmers. The said amounts were paid to the transporters on behalf of the farmers under their instructions. The AO rejected the contention of the assessee and disallowed the claim of the assessee and made addition of the said amount to the income of the assessee. The AO also made addition of Rs. 2,50,660/- on account of excess interest paid to its partners and determined the total income of the assessee at Rs. 59,21,270/-. Assessee challenged the assessment order before the Ld. CIT (A). The Ld.CIT (A) partly allowed the appeal of the assessee, however, confirmed the addition of Rs. 5,52,455/- made on account of disallowance u/s 40A(3) of the Act. Still aggrieved, the assessee is in appeal before this Tribunal.

3. The assessee has challenged the impugned order passed by the Ld. CIT (A) on the following effective grounds:-

- “1. Because, the CIT (A) has erred in law and on facts in upholding the disallowance u/s 40A(3) on account of payment to transporters amounting to Rs. 552,455/- made by the AO.
2. Because, the CIT (A) has erred in law and on facts in ignoring the binding precedence cited during the appellate proceedings.”

4. Before us, the Ld. counsel for the assessee submitted that the assessee is a trader in onion and potato. As a matter of practice, the farmers used send the produce from villages through transporters arranged by them after giving advance. The farmers also used to send the Bill along with goods showing balance amounts to be paid as transport charges to the transporter by the assessee on behalf of the farmers. The assessee used to deduct the said amounts from the sale proceeds. In the present case, the assessee had made payment of Rs. 5,52,455/- to 13 such transporters above Rs. 35,000/- in cash. Since, the payments were made to the farmers for purchase of agriculture goods, it is covered under rule 6DD(e) being payment for the purpose of agriculture produce. The Ld. counsel further submitted that the assessee has submitted vouchers showing payments to the transporters,

copies of bills from transporters mentioning the freight charges and copies of bills issued by the farmer mentioning therein the advance given to the transporter along with lorry No., details of produce etc. The Ld. counsel placing reliance on the decision of the Pune Bench of the ITAT in the case of *ITO vs. M/s Dhanshree Ispat, ITA No. 749/PUN/2013* dated 31.05.2017, submitted that in the said case, the Tribunal has dismissed the appeal filed by the revenue and decided the similar issue in favour of the assessee. The Ld. counsel further pointed out that the Pune Bench of the Tribunal has decided the said issue in the light of the ratio laid down by the Hon'ble Supreme court in the case of *Attar Singh Gurmukh Singh vs. ITO 191 ITR 667 (SC)*, the Hon'ble Rajasthan High Court in the case of *Harshila Chordiya vs. ITO 298 ITR 349 (Rajasthan)* and the Hon'ble Punjab and Haryana High Court in the case of *Gurudas Garg vs. Commissioner of Income Tax 63 taxman.com 289 (Punjab & Haryana)*. The Ld. counsel further submitted that the issue involved in the present case is similar to the issue raised in the cases referred above, the same is covered in favour of the assessee. Since, the impugned order passed by the Ld. CIT (A) is contrary to the decision of the Pune Bench of the Tribunal, the same is liable to be set aside.

5. On the other hand, the Ld. Departmental Representative (DR) supported the decision of the Ld. CIT (A) and further submitted that the ratio laid down in the cases relied upon by the assessee are not applicable to the present case as the facts of the said cases are different from the facts of the assessee's case.

6. We have heard the rival submissions of the parties and perused the material on record including the cases relied upon by the authorities below and the cases relied upon by the Ld. counsel for the assessee. Admittedly, in the present case, the revenue has not disputed the payments made to the transporters. Further, the assessee has explained the circumstances under which the questioned payments were made to the transporters. We notice that the AO made addition u/s 40A(3) of the Act rejecting the contention of the assessee that the payments were made on behalf of the farmers and

subsequently deducted from sale proceeds given to the farmers, therefore the said expenditure is in the nature of payment made to the farmers for purchase of agriculture goods. As pointed out by the Ld. counsel for the assessee in the case of *ITO vs. M/s Dhanshree Ispat*, (supra) the Pune Bench of the Tribunal has dismissed the appeal of the revenue and deleted the addition made u/s 40A(3) of the Act, holding that the assessee has explained the circumstances under which the payments were made. The findings of the Tribunal are as under:

“6. The Hon“ble Supreme Court of India in the case of Attar singh Gurmukh Singh Vs. Income Tax Officer (supra) under similar circumstances deleted the disallowances made u/s. 40A(3) by holding as under :

“4. 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 authorising levy of tax on an assumed income would be a restriction on the right to carry on business, besides being arbitrary. 5. 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 undisclosed sources. The terms of section 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 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. (Mudiam Oil Company v. ITO [1973] 92 ITR 519 (AP)). If the payment is made by a crossed cheque drawn on a bank or 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.”

7. The Hon“ble Rajasthan High Court in the case of Smt. Harshila Chordia Vs. Income Tax Officer (supra) deleted the disallowances made u/s. 40A(3) by observing that no disallowance u/s. 40A(3) could be made by taking a hyper technical view where the transactions are genuine.

8. The Hon“ble Punjab and Haryana High Court in the case of Gurdas Garg Vs. Commissioner of Income Tax (supra) while considering similar issue where disallowances u/s. 40A(3) was made deleted the disallowance by observing that where genuineness of transaction made in cash in excess of Rs.20,000/- was not disbelieved by authorities, the same cannot be disallowed u/s. 40A(3) of the Act.

9. In the present case, the payment made by the assessee to the individual truck driver has not been disputed. It is not the

case of Department that the payments made by the assessee are not genuine or the payees are not identifiable. The assessee has sufficiently explained the circumstances under which the payments have been made to the truck drivers in cash. The Assessing Officer made disallowance by taking a pedantic view of the cash transactions. Where cash payments are made under bonafide conditions and no doubt is raised over genuineness of the payments and the payees are identifiable; no disallowances u/s. 40A(3) is warranted. Thus, in view of the facts of case and various decisions discussed above, we do not find any error in the findings of Commissioner of Income Tax (Appeals) in deleting disallowances of Rs.60,73,403/- made by the Assessing Officer u/s. 40A(3) of the Act. We concur with the findings of Commissioner of Income Tax (Appeals). Accordingly, ground Nos. 1 and 2 raised by the Department in appeal are dismissed.

7. The Hon'ble Supreme Court in the case of *Attar Singh Gurmukh Singh vs. ITO* has held that the provisions of section 40A(3) read with rule 6DD(e) cannot be said to be intended to restrict business activities. The provisions of section 40A(3) apply for payments made for acquiring stock-in-trade and other materials. In our considered view, the assessee has explained the circumstances under which the payments were made to the transporters. The assessee has demonstrated before the authorities below that the payments were made for purchase of agricultural produce. On the other hand, there is no evidence on record to conclude that the questioned payments do not come within the ambit of rule 6DD(e) of the Income Tax Rules. Even the AO did not examine the concerned farmers or sought their explanation to verify the contention of the assessee. Hence, respectfully following ratio laid down by the Hon'ble Supreme Court in the case discussed above and the decision of the Pune Bench of the Tribunal, we allow the appeal of the assessee and set aside the decision of the Ld CIT(A). Accordingly, we direct the AO to delete the addition made u/s 40A(3) of the Act.

In the result, appeal filed by the assessee for assessment year 2014-2015 is allowed.

Order pronounced on 5th Nov., 2020 under rule 34 (4) of the Income Tax Appellate Tribunal Rules, 1963.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 05/11/2020

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai