

आयकर अपीलीय अधीकरण, न्यायपीठ – “सि” कोलकाता,  
IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH “C” KOLKATA

Before **Shri J.Sudhakar Reddy, Accountant Member** and  
**Shri Sanjay Garg, Judicial Member**

**ITA No.589/Kol/2019**  
Assessment Year: 2012-13

M/s Panihati Rubber Ltd., 36, B.T. Road, Kamarhati, Kolkata-700 058 [PAN NO. AABCP 9146 Q]	बनाम / V/s.	Deputy Commissioner of Income Tax, Circle- 7(2), Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-700 069
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

**Hearing through video Conferencing**

अपीलार्थी की ओर से/By Appellant	Shri Arihant Jain, AR
प्रत्यर्थी की ओर से/By Respondent	Shri Supriya Paul, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	14-01-2021
घोषणा की तारीख/Date of Pronouncement	11-02-2021

**आदेश /O R D E R**

The present appeal has been preferred by the assessee against the order dated 26.02.2019 of the Commissioner of Income-tax (Appeals)-18, Kolkata [hereinafter referred to as ‘CIT(A)’].

2. The assessee in this appeal has agitated the addition of ₹29,63,309/- made by the Assessing Officer on account of disallowance u/s 40A(3) of the Income Tax Act, 1961 (in short ‘the Act’) in respect of deduction claimed by the assessee u/s 35DDA(1) read with section Rule 6DD of the Income Tax Rule, 1962.

3. The brief facts relevant to the issue are that the assessee had a factory at 36, B.T. Road, Kolkata-56. There was a prolonged labour strike from 19.08.2010 in the

factory and discussions at tripartite level was done between the labour union, the management and Deputy / Asst. Labour Commissioner, Barackpore, Govt. of West Bengal. The settlement was done on 25.06.2011 and a voluntary separation scheme was finalized. As per the said settlement the key issue was in view of huge financial loss of the assessee's factory due to unviable products, changed railway procurement policy, labour dispute, steep rise in input price, red category pollution status of factory. The management proposes to relocate the factory to rubber park at Domjur, Howrah to set up a modern factory and the labour disputes were settled on the following terms:-

- All employees shall accept voluntary separation of services and submit their application to the management which shall scrutinize the same and accept, if found acceptable;
- The management would make the following payments:-  
VS been fits to permanent workers @ 30 days wages / salary last drawn.  
The trainee workers shall be paid benefits @ 45 days stipend / wages last drawn.
- It was decided that employees would apply for Voluntary Separation Scheme (VSS) in prescribed form and the company shall pay all the benefits under the said scheme within 31.07.2011.

Accordingly, a joint meeting between the management of the assessee & representatives of Panihati Rubber Ltd., Employees union was held on 26<sup>th</sup> June 2011 and it was settled that the dues of the labourers will be paid in cash as the labourers did not have bank accounts.

As such owing to the above unavoidable circumstances and considering the business expediency the assessee-company had to under compulsion with no other alternatives, pay the VSS benefits to its labourers in cash. The assessee-appellant has made payment of ₹29,63,309/- under the VSS scheme. As per the provision of Section 35DDA(1) the assessee was entitled for the deduction of 1/5<sup>th</sup> of the amount paid as voluntary retirement benefits for each of the consecutive previous year in which the expenditure was actually incurred. The assessee claimed ₹5,92,661/- being 1/5<sup>th</sup> of the

VSS expenditure actually incurred of ₹29,63,309/- u/s 35DDA(1) of the Act. However, Ld. Assessing Officer (in short "AO") during the assessment proceedings disallowed the entire VSS of ₹29,63,309/-.

4. Aggrieved by the said order of the Assessing Officer, the assessee preferred appeal before the Ld.CIT(A), but remained unsuccessful.

5. Before this Tribunal, the Ld. counsel for the assessee has submitted that the payment in cash was made to the employees / labourer out of compulsion as the factory of the assessee has been stopped due to labour strike. The cash payment of more than ₹50,000/- was made to the labourers so that the business of the assessee may be resumed. Therefore, the same was out of compulsion and commercial expediency. However recipients / labourers were identifiable and the payment made to them towards the benefit under VSS could be easily verified from the relevant documents. That there was no intention of the assessee to circumvent the provision of section 40A(3) of the Act. It has been further contended by the Ld. counsel for the assessee that at the most disallowance could have made of the amount of allowance claimed by the assessee u/s 35DDA(1) of the Act for the year under consideration. The disallowance more than the expenditure claimed could not have been made by the AO under any circumstances. The Ld. DR on the other hand has relied upon the finding of the lower authorities and has submitted that the assessee had not furnished the requisites details before the AO. The Ld. AR however, has submitted that all the details were furnished before the Ld. CIT(A), however, the Ld. CIT(A) rejected the contentions raised by the assessee.

6. We have heard the rival contentions and also gone through the record. As per the submission of the assessee, since the labour was on strike and there was a settlement arrived between the assessee-company and the labourers under which the part payment of their VSS benefits were made in cash out of compulsion so that the operation of the factory may be resumed. The co-ordinate bench of the Tribunal in the case of *Shri Daljit Singh vs. ACIT, Circle-40 Kolkata* in **ITA No.769/Kol/2018** vide order dated 03.04.2019 has extensively discussed about the scope of the disallowance

which can be made u/s 40A(3) of the Act, and after relying upon various case laws including the decision of the co-ordinate Jaipur bench in the case of *A. Daga Royal Arts vs. Income Tax Officer, Ward-2(2), Jaipur* ITA No.1065/JP/2016 vide order dated 15.05.2018 in which further reliance has been placed on the decision of the Hon'ble Supreme Court in the case of *Attar Singh Gurmukh Singh vs. Income Tax Officer Ludhiana Etc.* (1991) AIR 2109, has held that the Rule 6DD which provides for exceptions u/s 40A(3) of the Act against applicability of sec. 40A(3) of the Act, is not exhaustive enough to visualize all kinds of business expediency in all possible situations and it is for the appropriate authority to decide regarding genuine business expediency. It has been further held that rule must be interpreted in a manner so as to advance and not to frustrate the object of the legislature. That primary object of enacting Section 40A(3) of the Act was two folds. Firstly, putting a check on treating transactions with a mind to evade the liability to tax on income earned out of such transactions and secondly, to inculcate the banking habits amongst the business community. That the genuineness of the transaction and it being free from vice of any device of evasion of tax is relevant consideration which could be examined before invoking rigours of Section 40A(3) of the Act. The above stated legal position is fully applicable in the facts of the present case. There is no doubt about the genuineness of the transactions. Payments to the employees / labourers were made out of compulsions by the assessee. Therefore, we are of the view this is not a fit case of to apply rigours of section 40A(3) of the Act. The disallowance made by the lower authorities is, therefore, deleted.

**In the result, the appeal of the assessee stands allowed.**

Order pronounced in open court on 11/02/2021

Sd/-  
(लेखा सदस्य)  
(J.Sudhakar Reddy)  
Accountant Member

Sd/-  
(न्यायिक सदस्य)  
(Sanjay Garg)  
Judicial Member

\*Dkp-Sr.PS

दिनांक:- 11/02/2021

कोलकाता / Kolkata

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant- M/s Panihati Rubber Ltd., 36, B.T.Road, Kamarhati, Kol-58
2. प्रत्यर्थी/Respondent-DCIT, Cir-7(2), Aayakar Bhawan, P-7,Chowringhee Square  
Kolkata-700 069
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता/DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
कोलकाता ।