

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

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

आयकर अपील सं./ITA No. 250/JP/2019
निर्धारण वर्ष/Assessment Year : 2015-16

M/s Skyways Township Pvt. Ltd., Q-1/2, LIC Flats, Vidyadhar Nagar, Sector-6, Jaipur (Raj)	बनाम Vs.	D.C.I.T., Circle-4, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AALCS 3565 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 824/JP/2019
निर्धारण वर्ष/Assessment Year : 2014-15

M/s Skyways Township Pvt. Ltd., Plot No. 7A & B, Opposite Police Station, Road No. 5, Sikar Road, Jaipur.	बनाम Vs.	I.T.O., Ward 4(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AALCS 3565 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 251/JP/2019
निर्धारण वर्ष/Assessment Year : 2015-16

Smt. Manju Gupta Q-1/2, LIC Flats, Vidyadhar Nagar, Sector-6, Jaipur (Raj)	बनाम Vs.	D.C.I.T., Circle-4, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. ABIPG 0533 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Vedant Agarwal (CA) &
Shri Satish Gupta (CA)
राजस्व की ओर से / Revenue by : Shri Ambrish Bedi (CIT-DR)

सुनवाई की तारीख / Date of Hearing : 12/04/2021
उदघोषणा की तारीख / Date of Pronouncement : 22/06/2021.

आदेश / ORDER

PER: SANDEEP GOSIAN, J.M.

These are the appeals filed by the assesseees are directed against the separate orders of Id. CIT (A), Ajmer dated 28/01/2019 and 29/01/2019 and the Id. CIT(A)-2, Jaipur dated 29/04/2019 for the assessment years 2015-16 and 2014-15 respectively. The grounds taken by the assesseees in these appeals are reproduced as under:

Grounds of ITA No. 250/JP/2019 A.Y. 2015-16.

- “1. On the facts & circumstances of the case Ld. Lower Authorities grossly erred in making and confirming addition on protective basis for Rs. 58,78,803/- in hands of assessee company, despite of this fact that assessee company is not the shareholder of M/s Skyways Industrial Estate Pvt. Ltd.
2. On the facts & circumstances of the case & in law also Ld. Lower Authorities grossly erred in making addition ignoring the fact that the transaction made with M/s Skyways Industrial Estate Pvt. Ltd were business transaction & were in the nature of current account.
3. On the facts & circumstances of the case & in law also Ld. Authorities grossly erred in making addition of Rs. 58,78,803/- u/s 2(22)(e) of the Income Tax Act without considering the submission that addition of Rs. 58,78,803/- has already been made under section 2(22)(e) of the Act during the A.Y. 2014-15.”

Grounds of ITA No. 824/JP/2019 A.Y. 2014-15.

- “1. On the facts & circumstances of the case Ld. Lower Authorities grossly erred in making and confirming addition of Rs 58,78,803/- in hands of assessee company, despite of this fact that assessee company is not the shareholder of M/s Skyways Industrial Estate Pvt. Ltd.
2. On the facts & circumstances of the case & in law also Ld. Lower Authorities grossly erred in making addition ignoring the fact that the transaction made with M/s Skyways Industrial Estate Pvt. Ltd were business transaction & were in the nature of current account.
3. On the facts & circumstances of the case Ld. Lower Authorities grossly erred in making and confirming disallowance of Rs. 42,00,000/- U/s 40A(3) of the Act.”

Grounds of ITA No. 251/JP/2019 A.Y. 2015-16.

- “1. On the facts & circumstances of the case Ld. Lower Authorities grossly erred in making and confirming addition of Rs. 64,96,001/- u/s 2(22)(e) of the Income Tax Act on account of alleged accumulated profit in the hands of Skyways Industrial Estate Pvt. Ltd & M/s Skyways Township Pvt. Ltd without considering the assessee's submission that addition of Rs. 58,78,803/- has already been made in the hands of M/s Skyways township Pvt. Ltd under section 2(22)(e) during the preceding year i.e A.Y. 2014-15. Therefore there remains no accumulated profit to be distributed during this F.Y. and there was accumulated losses in the hands of M/s Skyways Township Pvt. Ltd.
2. On the facts & circumstances of the case Ld. Lower Authorities grossly erred in not considering assessee's submission that assessee has not taken any loan from M/s Skyways Industrial Estate Company Pvt. Ltd and M/s Skyways Township Pvt. Ltd.
3. On the facts & circumstances of the case & in law also Ld. Lower Authorities grossly erred in making addition ignoring the fact that the transaction in between two companies were business transaction & were in the nature of current account.
4. On the facts & circumstances of the case & in law also Ld. CIT(A) grossly erred in holding that appellant has not furnished any document to show that the transactions entered into with M/s Skyways Industrial Estate Company Pvt. Ltd and M/s Skyways Township Pvt. Ltd were business transactions and not loan, ignoring the ledgers of inter account transaction between companies which were submitted before him.”

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. In all these appeals, common issues are involved, therefore, all these appeals were heard together and for the sake of convenience and brevity, a common order is being passed.

4. As a lead case, we take ITA No. 250/JP/2019 for the A.Y. 2015-16 for deciding the appeals. The brief facts of the case are that the assessee is a registered company involved in the business of purchasing lands and

developing residential township projects on such lands. The return of income was filed by the assessee on 25/09/2015 declaring loss of Rs. 23,18,780/-. Notices were issued to the assessee. The assessee filed reply before the A.O. and after considering the material placed on record, the A.O. made two additions, namely:

- Firstly, of Rs. 58,78,803/- in the hands of the assessee company u/s 2(22)(e) of the Income Tax Act (hereinafter, 'the Act').
- Secondly, of Rs. 42,00,000/- u/s 40(A)(3) of the Act.

5. Being aggrieved by the order of the A.O., the assessee carried the matter before the Id. CIT(A), who after considering the submissions of both the parties and material placed on record, confirmed the action of the A.O.. Against the said order of the Id. CIT(A), the assessee is in appeals before the ITAT by taking the grounds mentioned above.

6. Grounds No. 1 to 3 of this appeal are interlinked and interrelated and relates to challenging the order of the Id. CIT(A) in confirming the addition of Rs. 58,78,803/-. In this regard, the Id. AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the Id. CIT(A) and also relied on the written submissions filed before the Bench and the contents of the same are reproduced as under:

- "1. That it is humbly submitted that the provisions of Section 2(22)(e) of the act are not applicable on the present appeal.*
- 2. That it is on record that the assessee company was not a shareholder in M/s Skyways Industrial Estate Co. Pvt. Ltd., the same can be seen from*

the list of shareholders that is annexed on Page No, 16 and 17 of the Assessee Paper Book.

- 3. That since the assessee company is not a shareholder in M/s Skyways Industrial Estate Co. Pvt. Ltd. — the question of any advance or loan to a shareholder does not arise and hence, this deeming provision will not be applicable on the assessee.*
- 4. That it is not under dispute that Mrs. Manju Gupta was holding substantial interest in Skyways Industrial Estate Co. Pvt. Ltd. is also a majority stakeholder in the assessee company.*
- 5. That it is humbly submitted, that since assessee itself is not a shareholder in the company, the addition cannot be made in the hands of the assessee company.*
- 6. That since Mrs. Manju Gupta holds substantial interest in M/s Skyways Industrial Estate, the addition has already been made in her case. However, that addition in the hands of Mrs. Manju Gupta for the AY 2015-16 is being contended on merits. He relied on the decision of the Hon'ble Rajasthan High Court, Jodhpur in the case of M/s Hotel Hilltop [ITA 25 of 2005:*
- 7. That, in any case, this addition if sustained could lead to double jeopardy and the department cannot play roulette by making the addition in multiple cases of one single transaction.*
- 8. That it is undisputed that there were intercorporate current account business transactions between Skyways industrial Estate Pvt. Ltd. and Skyways Township Pvt. Ltd.*
- 9. That it is humbly submitted that these transactions are in the current account and therefore no addition can be made u/s 2(22)(e).*
- 10. That no amount has gone to the shareholder.*

11. *That the amounts have been received by the assessee company for business consideration and business transactions only carried out by the group companies.*
 12. *That initially the assessee company received amount from the subsidiary, but later on the amount has been returned by the assessee and the balance has been squared up.*
 13. *That in the earlier years, no such addition has been made for similar transactions.*
 14. *That to establish that these transactions were in the nature of business — it is key to look at one such transaction of Rs. 42,00,000/- that has been received by Skyway Township Pvt. Ltd. on 1.07.2013 [Page number 1 of APB 2] which the assessee used to pay Smt. Santosh Devi after withdrawing the same amount from bank on 2.07.2013, the addition for the same has been made in the case of the assessee under section 40A(3).*
 15. *That the assessee company and the Skyways Industrial Estate Pvt. Ltd. are in the same business of real estate and money has been taken for the ordinary course of business. He relied on the decision of Hon'ble ITAT Delhi in M/s Exotica & Infrastructure Company Pvt. Ltd. [decided on 24.06.2020].*
7. On the other hand, the Id. DR has vehemently supported the orders of the authorities below and submitted that the Id. CIT(A) has passed a speaking order considering all the material available on record.
8. We have heard the Id. Counsels of both the parties and have perused the material placed on record. We have also deliberated upon the decisions cited in the orders passed by the authorities below as well as cited before us

and we have also gone through the orders passed by the revenue authorities. As per facts of the present case, registered company involved in the business of purchasing lands and developing residential township projects on such lands. From perusal of record, we observed that the additions were made U/s 2(22)(e) of the Act. Section 2(22)(e) of the Act says that 'dividend' includes:

“any payment by a company, not being a company in which the public are substantially interested, of any sum (whether as representing a part of the assets of the company or otherwise) made after the 31st day of May, 1987, by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest (hereafter in this clause referred to as the said concern) or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits”

but dividend does not include ---

- (i) a distribution made in accordance with sub-clause (c) or sub-clause (d) in respect of any share issued for full cash consideration, where the holder of the share is not entitled in the event of liquidation to participate in the surplus assets ; (ia) a distribution made in accordance with sub-clause (c) or sub-clause (d) in so far as such distribution is attributable to the capitalised profits of the company representing bonus shares allotted to its equity shareholders after the 31st day of March, 1964, and before the 1st day of April, 1965 ;*
- (ii) any advance or loan made to a shareholder or the said concern by a company in the ordinary course of its business, where the lending of money is a substantial part of the business of the company ;*
- (iii) any dividend paid by a company which is set off by the company against the whole or any part of any sum previously paid by it and*

treated as a dividend within the meaning of sub-clause (e), to the extent to which it is so set off;

- (iv) any payment made by a company on purchase of its own shares from a shareholder in accordance with the provisions of section 77A of the Companies Act, 1956 (1 of 1956);*
- (v) any distribution of shares pursuant to a demerger by the resulting company to the shareholders of the demerged company (whether or not there is a reduction of capital in the demerged company).*

Explanation 1.—The expression "accumulated profits", wherever it occurs in this clause, shall not include capital gains arising before the 1st day of April, 1946, or after the 31st day of March, 1948, and before the 1st day of April, 1956.

Explanation 2.—The expression "accumulated profits" in sub-clauses (a), (b), (d) and (e), shall include all profits of the company up to the date of distribution or payment referred to in those sub-clauses, and in sub-clause (c) shall include all profits of the company up to the date of liquidation, but shall not, where the liquidation is consequent on the compulsory acquisition of its undertaking by the Government or a corporation owned or controlled by the Government under any law for the time being in force, include any profits of the company prior to three successive previous years immediately preceding the previous year in which such acquisition took place.

Explanation 2A.—In the case of an amalgamated company, the accumulated profits, whether capitalised or not, or loss, as the case may be, shall be increased by the accumulated profits, whether capitalised or not, of the amalgamating company on the date of amalgamation. Explanation 3.—For the purposes of this clause,— (a) "concern" means a Hindu undivided family, or a firm or an association of persons or a body of individuals or a company ; (b) a person shall be deemed to have a substantial interest in a concern, other than a company, if he is, at any time during the previous year, beneficially entitled to not less than twenty per cent of the income of such concern ;"

9. From perusal of the record, we observed that the assessee company was not a shareholder in M/s Skyways Industrial Estate Co. Pvt. Ltd., the same can be seen from the list of shareholders which is placed at Page No. 16 and 17 of the Assessee's Paper Book. Since the assessee company is not a shareholder in M/s Skyways Industrial Estate Co. Pvt. Ltd., therefore, the question of any advance or loan to a shareholder does not arise and hence, this deeming provision will not be applicable on the case of the assessee. It was not under dispute that Mrs. Manju Gupta was holding substantial interest in Skyways Industrial Estate Co. Pvt. Ltd. was also a majority stakeholder in the assessee company. The assessee itself is not a shareholder in the company, the addition cannot be made in the hands of the assessee company. We also observed that Mrs. Manju Gupta holds substantial interest in M/s Skyways Industrial Estate, the addition has already been made in her case. However, that addition in the hands of Mrs. Manju Gupta for the AY 2015-16 is being contended on merits. In this regard, we draw strength from the decision of Hon'ble Rajasthan High Court, Jodhpur as relied upon by the Id. AR in the case of **M/s Hotel Hilltop [ITA 25 of 2005]** wherein it has been categorically held that:

"The more important aspect, being the requirement of Section 2(22)(e) is, that "the payment may be made to any concern, in which such shareholder is a member, or the partner, and in which he has substantial interest, or any payment by any such company, on behalf, or for the individual benefit of any such shareholder..." Thus, the substance of the requirement is, that the payment should be made on behalf of, or for the individual benefit of any such shareholder, obviously, the provision is intended to attract the liability of tax on the person, on whose behalf, or for whose individual benefit, the

amount is paid by the company, whether to the shareholder, or to the concern firm. In which event, it would fall within the expression "deemed dividend". Obviously, income from dividend, is taxable as income from other sources, under Section 56 of the Act, and in the very nature of things, the income has to be, of the person earning the income. The assessee in the present case is not shown to be one of the persons, being shareholder. Of course the two individuals being Roop Kumar and Devendra Kumar, are the common persons, holding more than requisite amount of share holding, and are having requisite interest, in the firm, but then, thereby the deemed dividend would not be deemed dividend in the hands of the firm, rather it would obviously be deemed dividend in the hands of the individuals, on whose behalf, or on whose individual benefit, being such shareholder, the amount is paid by the company to the concern. Thus, the significant requirement of Section 2(22) (e) is not shown to exist. The liability of tax, as deemed dividend, could be attracted in the hands of the individuals, being the shareholders, and not in the hands of the firm."

10. We also observed that, in any case, this addition if sustained could lead to double jeopardy and the department cannot play by making the addition in multiple cases of one single transaction. It is undisputed that there were intercorporate current account business transactions between Skyways Industrial Estate Pvt. Ltd. and Skyways Township Pvt. Ltd., these transactions were in the current account and therefore no addition can be made u/s 2(22)(e) of the Act. It is also not in dispute that no amount has gone to the shareholder. The amounts have been received by the assessee company for business consideration and business transactions only carried out by the group companies. Initially the assessee company received amount from the subsidiary, but later on the amount has been returned by the assessee and the balance has been squared up. In the earlier years, no such addition has been made for similar transactions. To establish that these transactions were

in the nature of business – it is key to look at one such transaction of Rs. 42,00,000/- that has been received by Skyway Township Pvt. Ltd. on 01.07.2013 which has been placed at Page number 1 of APB 2, which the assessee used to pay Smt. Santosh Devi after withdrawing the same amount from bank on 02.07.2013, the addition for the same has been made in the case of the assessee under section 40A(3) of the Act. The assessee company and the Skyways Industrial Estate Pvt. Ltd. are in the same business of real estate and money has been taken for the ordinary course of business. We draw strength from the decision of Coordinate Bench of Delhi ITAT in the case of **M/s Exotica & Infrastructure Company Pvt. Ltd. in ITA No. 5188/Del/2019 [decided on 24.06.2020]** where too the company in question was having the same business nature as its subsidiary and a current account was being maintained between the company in question and its subsidiary. The Coordinate Bench of ITAT Delhi has categorically held that:

“The crux of the above decisions are that the transactions carried out through current account for business purposes would not fall within the definition of “Deemed Dividend”. Considering the facts of the case in the light of above decisions, we examined the ledger account of the subsidiary company in the books of the assessee company, copy of which is filed at page-7 of the PB, which reveals that initially the assessee company has taken amount from the subsidiary company which was repaid and thereafter, it is the assessee company which has given the amount to the subsidiary company on most of the occasions and later on the subsidiary company has returned the amount to the assessee. Therefore, such facts would clearly reveal that provisions of Section 2(22)(e) would not be attracted in the case of assessee company because on most of the occasions the assessee company has

advanced the amount to the subsidiary company and ultimately the balance is squared-up at the end of the year...

*...The above issue have been considered by the different Benches of the ITAT as reproduced above in which various decisions of different High Courts have been considered **and it was held that “when current account is maintained between the parties, provisions of Section 2(22)(e) of the I.T. Act, 1961, would not apply.”** Thus, the issue is covered by the aforesaid decisions of the Tribunal in favour of the assessee as well as various decisions considered by the Hon’ble jurisdictional Delhi High Court. In view of the above, we do not find any justification to sustain the addition. In view of the above findings, we set aside the Orders of the authorities below and delete the addition.”*

11. In view of the above facts and circumstances as well as by respectfully following the judicial precedents cited above, we are of the considered view that the case of the assessee is squarely covered as the assessee and its subsidiary were in the same business. The money had been taken to purchase a land, which was common purpose and a current account was being maintained between the assessee and its subsidiary. Accordingly, we direct to delete the addition made U/s Section 2(22)(e) of the Act qua the issues. We direct accordingly.

12. Now we take ITA No. 824/JP/2019 for the A.Y. 2014-15.

In this appeal, the grounds No. 1 and 2 taken by the assessee are identical to grounds of appeal in ITA No. 250/JP/2019 for the A.Y. 2015-16. The facts of the case as well as the submissions of both the parties are also similar to the facts and submissions made by both the parties in ITA No. 250/JP/2019 for the A.Y. 2015-16. Therefore, the findings given by us in ITA

No. 250/JP/2019 for the A.Y. 2015-16 shall apply mutatis mutandis in this year also.

13. Ground No. 3 of this appeal raised by the assessee relates to challenging the order of the Id. CIT(A) in confirming the disallowance of Rs. 42,00,000/- made U/s 40A(3) of the Act.

14. Having considered the rival contentions and carefully perused the material available on record. From perusal of the record, we noticed that the AO held in the assessment order that Rs. 42,00,000 has been paid to Smt. Santosh Devi for purchase of land and disallowed the same stating that it is in violation of Section 40A(3). It was submitted before us by the Id AR that the cheques of Rs. 42,00,000/- which are placed at page Nos. 11 and 12 of the paper book, issued by the assessee were dishonoured and therefore, the assessee was under legal obligation to honour the registered sale deed agreement. The assessee had to make payment in cash as the seller was not ready to accept payment through cheques. On the request of the seller, the amount of Rs. 42,00,000/- was withdrawn from the bank. Copy of the cash book statement and bank account statement is placed at page No. 13 of the assessee's paper book. The Id AR has relied on the decision of ITAT Jaipur Bench in the case of **M/s Vijayeta Buildcon Pvt. Ltd. Vs ACIT in ITA No. 980/JP/2018 order dated 27/10/2020** and we also draw strength from this decision wherein identical issue has been decided by the Coordinate Bench by relying on the judgment of the Coordinate Bench in the case of **M/s**

A Daga Royal Arts Vs ITO in ITA No. 1065/JP/2016 order dated 15/05/2018 and held that:

"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...

...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.”...

... 29. In the instant case, we find that the identity of the persons from whom the purchase of various land parcels have been made by the assessee has been established and 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. The genuineness of the transaction has been established as evidenced by registered sale deeds wherein the payments through cheque as well as cash has been duly mentioned and lastly, the test of business expediency has been met as the initial payments as insisted by the sellers most of whom are farmers have been made in cash to secure the transaction. Further, 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 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."

30. In the entirety of facts and circumstances of the case and respectfully following the legal proposition laid down by the various Courts including that of the Jurisdictional High Court and the Coordinate Benches 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. In the result, appeal of the assessee is allowed."

15. In view of the above facts and circumstances as well as by respectfully following the decision of the Coordinate Bench in similar matter, we are of the considered view that we find merit in the contention of the assessee and we direct to delete the addition made U/s Section 40(A)(3) of the Act qua this issue. We direct accordingly.

16. Now we take ITA No. 251/JP/2019 for the A.Y. 2015-16.

In this appeal, the grounds of appeal taken by the assessee are identical to grounds of appeal in ITA No. 250/JP/2019 for the A.Y. 2015-16. The facts of the case as well as the submissions of both the parties are also similar to the facts and submissions made by both the parties in ITA No. 250/JP/2019 for the A.Y. 2015-16. Therefore, the findings given by us in ITA

No. 250/JP/2019 for the A.Y. 2015-16 shall apply mutatis mutandis in this year also.

17. In the result, all these appeals of the assessee are allowed.

Order pronounced in the open court on 22/06/2021.

Sd/-

Sd/-

(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

(संदीप गोसाई)
(SANDEEP GOSIAN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 22/06/2021.

*Ranjan

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

1. अपीलार्थी / The Appellant- i. M/s Skyways Township Pvt. Ltd., Jaipur.
ii. Smt. Manju Gupta, Jaipur.
2. प्रत्यर्थी / The Respondent- i. The D.C.I.T., Circle-4, Jaipur.
ii. The I.T.O., Ward 4(2), 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. 250, 824 & 251/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar