

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
SH. AMIT SHUKLA, JUDICIAL MEMBER  
(THROUGH VIDEO CONFERENCING)**

ITA No.2680/Del/2018  
Assessment Year: 2013-14

<b>Surya Bano B-4/230, Sector-7, Rohini, New Delhi-110085 PAN No.ANQP B1182R</b>	<b>Vs</b>	<b>ITO Ward- 35 (1) New Delhi</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Sh. Sanjay Issar, CA
Respondent by	Sh. Kumar Pranav, Sr. DR

Date of hearing:	24/11/2021
Date of Pronouncement:	/11/2021

**ORDER**

**PER N. K. BILLAIYA, AM:**

This appeal by the assessee is preferred against the order of the CIT(A)-12, New Delhi dated 16.10.2017 pertaining to A.Y. 2013-14.

## 2. The grievance of the assessee read as under :-

1. On the facts and in the circumstances of the case and in law the Hon'ble Commissioner of Income-tax (Appeals)' erred in rejecting that CBDT circular 220(F No. 206/17/76-IT (A-II)) dated 31/05/1977 and ignored that the creditors have duly confirmed the receipt of these bearer cheques.
2. On the facts and in the circumstances of the case and in law the Hon'ble Commissioner of Income-tax (Appeals)' erred in rejecting the addition of Rs. 14,185,500/- on account of bearer cheques issued to creditors with their consent for non-acceptance of account payee cheque as not an abnormal situation. The assessee had no option if he wanted to survive in the market.
3. On the facts and in the circumstances of the case and in law the Hon'ble Commissioner of Income-tax (Appeals)' erred in rejecting that issuing payment through RTGS or NEFT is not possible under peculiar circumstances.
4. On the facts and in the circumstances of the case and in law the Hon'ble Commissioner of Income-tax (Appeals)' erred in not accepting that the market will accept his credibility over a period of time not in the first year of the business.
5. The Appellant prays that the addition/ disallowance of Rs. 14,185,500/- made in respect of issued mentioned in ground 1 to 4 be deleted.
6. The Appellant craves leave to add, amend, alter vary and / or withdraw any or all the above grounds of Appeal.

3. Briefly stated the facts of the case are that during the course of the assessment proceedings and on verifying the party, sale and purchase the Assessing Officer noticed that payments of Rs.14185500/- were made in a day otherwise than by an account payee cheque drawn on a bank or account payee bank draft exceeds Rs.20,000/- which is in contravention and violation of section 40A(3). The details of such payments are as under :-

Sr. No	Name of the parties and address	Total Purchase (in Rs.)	Mode of payment in cash during the year	Total paid during the year	Balance amount
1.	Sai Enterprises, 2084, 1st Floor, Chahinidara Chandni Chowk, Delhi	32,39,005/-	18,67,000/-	19,60,000/-	12,79,005/-
2.	Sh. Gobind Enterprises, Y-198-199, Room No. 18, Loha Mandi, Naraina, Delhi	43,57,670/-	10,00,000/-	10,55,000/-	33,02,670/-
3.	Dolphine Sales Corporation, 425/14, Street No. 6, Bhola Nath Nagar, Shahdara, Delhi	1,44,39,925/-	76,89,000/-	1,01,64,000/-	42,75,925/-
4.	Star Point Associate, 1167, Kurla, Sita Ram Bazar, Delhi	55,37,239/-	25,44,500/-	25,77,000/-	29,60,239/-
5.	Salasar Enterprises, Flat No. 1, Phase No. 11/4/2932, Sh. Ram Colony, Bhola Nath Nagar, Shahdara, Delhi	1,22,51,876/-	10,35,000/-	12,35,000/-	1,10,16,876/-
6.	Balaji Trading Co. 1658, III Floor, Mangal Market, Bhagirath Place, Delhi	6,75,243/-	50,000/-	67,500/-	6,07,743/-
	Total	40,5,00,958/-	1,41,85,500/-	1,70,58,500/-	2,34,42,458/-

4. The assessee was asked to show cause why the payment of Rs.14185500/- should not be disallowed u/s.40A(3) of the Act. The assessee replied as under :-

"Your honour we would like to draw your attention towards the CBDT Circular No. 220(F. No. 206/17/76-IT (A-II), dated 31.05.1977.

In the said circular CBDT has mentioned following points:

- a. *Due to exceptional or unavoidable circumstances, or*
- b. *Because payment in the manner aforesaid was not practicable or would have caused genuine difficulty to the payee, having regard to the nature of the transaction and the necessity for expeditious settlement thereof, and also furnishes evidence to the satisfaction of the Income Tax Officer as to the genuineness of the payment and the identity of the payee.*

*The circumstances are exceptional as the parties mentioned by your honour are not accepting crossed cheque from us. Since assessee has to run the business hence had no option but to accept the condition raised by his supplier. The assessee has given them bearer cheques which were duly shown in the account of the creditor in his confirmation.*

*Similarly identity and genuineness of the payee is proved since they have confirmed all the transactions entered by the assessee in his books of accounts. The conditions raised by CBDT circular are duly met by the assessee hence the benefit may please be given to the assessee.*

*We hope you will find the above in order and give us relief as per circular of CBDT as mentioned above and enclosed."*

5. The reply of the assessee did not find any favour with the Assessing Officer who proceeded by disallowing Rs.14185500/- u/s. 40 A(3) of the Act.

6. Assessee strongly agitated the matter before the CIT(A) and reiterated that the payments are covered by CBDT circular No.220(F.No.206/17/76-IT(A-II) dated 31.05.1977 it was strongly contended that the payees have given certificate stating that they insisted the payment to be made by bearer cheque.

7. After considering the facts and the submissions the CIT(A) held as under :-

5.3.7 Even if it is presumed that the certificates were submitted before the Assessing Officer in some other form, it is not understood as to why the parties refused to accept the payment through account payee cheques. The only difference between an account payee cheque and bearer cheque is that the bearer cheque can be encashed by the bearer of the cheque, who may be any person be it the seller of the goods or any other person. The payments through account payee cheques are directly credited to the bank account of the payee. A bearer cheque cannot be equal to cash in order to ensure the payments and avoid any default on the part of the payer. The bearer cheque can bounce for number of reasons including insufficient balance. Therefore, the preference of the parties to accept bearer cheques over the account payee cheque is not understandable. In certain circumstances, the receipt of payments through bearer cheque may be more uncertain than an account payee cheque or account payee draft. The provisions of law in the case of bouncing the cheque are the same. The Appellant has not submitted before me the evidences that the parties declared the payments in their books of account and paid the taxes thereon. I also find force in the observation of the Assessing Officer that payments amounting to Rs.18,90,000/- were made by the Assessee to M/s Dolphine Sales Corporation to RTGS and NEFT. On the above facts, it can be stated here that the reasons submitted by the Assessee through the certificates from the parties to the effect that they were not ready to accept the payments through account payee cheque or account payee draft is not convincing for the reasons discussed above. Moreover, the Assessee's case may not fall under 'exceptional or unavoidable circumstances' because the payments are huge, so much so that out of total purchase of Rs.4,05,00,958/-, payment amounting to Rs.76,89,000/- was made to M/s Dolphine Sales Corporation through bearer cheque / cash only. The exceptional circumstances may be a few during a particular financial year. The reasons explained for practicability has not been found convincing at

Appeal No. 178/16-17

all. Due to the above reasons the ratio laid down in the cases - **CIT vs. Avtar Singh and Sons (1992) 194 ITR 80 (P&H)** and **CIT vs. Meghdoot Sales (1993) 200 ITR 490 (Delhi)** is not found applicable to the facts of the case under consideration. On the above facts and in the circumstances, I hold that the Assessing Officer was justified in disallowing the payments u/s 40A(3) of the I.T. Act. Accordingly, the grounds are dismissed.

8. Before us the counsel once again stated what has been stated before the lower authorities and relied upon the decisions which were relied before the CIT(A).

9. Per contra the DR strongly supported the findings of the CIT(A).

10. We have given a thoughtful consideration to the orders of the authorities below. The undisputed fact is that payments amounting to Rs.14185500/- were made to six parties mentioned elsewhere by bearer cheque. Though the assessee has heavily relied upon the certificates / letters given by the payees stating that the payee have refused to accept account payee cheques from the assessee, we find that all the certificates from the different payees are similarly worded and we fail to understand once the bearer cheque were acceptable to the payees why the same was not accepted as account payee cheques. The assessee has not brought any commercial exigencies / urgencies for making the purchases through bearer cheque. We find that many payments have been made through RTGS which means that the assessee was well conversant with the banking transaction and banking operations, therefore, we do not find any justifiable cause or exceptional circumstances for the impugned payments through bearer cheques which is in violation of the provisions of section 40 A(3) of the Act. We find that the CIT(A) has clearly distinguish the facts with the facts of the judgments relied upon by the assessee. We, therefore, do not find any reason to interfere with the findings of the CIT(A).

11. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 29.11.2021.

Sd/-  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Sd/-  
**(N. K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

\*NEHA\*

Date:- 29 .11.2021

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
 ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	29.11.2021
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	