

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE SH. RAVISH SOOD, JUDICIAL MEMBER
AND DR. M. L. MEENA, ACCOUNTANT MEMBER**

**I.T.A. No. 489/(Asr)/2017
Assessment Year: 2014-15**

Deputy Commissioner of
Income Tax C-II, Bathinda

Vs. Sh. Vinod Arora through
L/H Sh. Karan Arora, 52,
Housefed Colony, Bathinda
[PAN: ADGPA 2919M]

(Appellant)

(Respondent)

Appellant by : Sh. P. N. Arora, Advocate
Respondent by: Sh. Trilochan Singh PS Khalsa, DR

Date of Hearing: 23.12.2021
Date of Pronouncement: 21.02.2022

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the revenue is directed against the order passed by the Commissioner of Income-Tax (Appeals), Bathinda, dated 19.05.2017, which in turn arises from the order passed by the AO u/s. 143(3) of the Income-Tax Act, 1961 ("Act", for short), dated

23.12.2016 for AY 2014-15. Before us the revenue has assailed the impugned order on the following grounds of appeal :

- “1. The Ld. CIT(A) has erred in holding that the assessee was exempt from the provisions of section 40(A)(3) by virtue of his case falling under Rule 6DD(b) without appreciating that clause (b) of Rule 6DD was applicable only where payment was made to Government and that cash payments made to State Government Undertakings would not be covered being separate legal entities distinct from State Government.
2. The Ld CIT(A) has erred in presuming that receipt of payment in legal tender was not prohibited by any rules framed by the State Government Undertakings thereby ignoring that clause(b) of Rule 6DD required that such expenditure was allowable only if under the rules framed by Government, such payment was required to be made in legal tender and no such rules have been pleaded.
3. The Ld CIT(A) while holding that receipt of payment in legal tender was not prohibited by any rules framed by the State Government Undertakings did not appreciate that the such reasoning would negate the provisions of the statute and render section 40A(3) of the Income Tax Act a nullity.
4. The Ld. CIT(A) has erred in holding that no disallowance u/s 40 A(3) could be made as genuineness of the payment was not in doubt thereby ignoring that any expenditure not covered under the exceptions provided under clause(a) to (1) of Rule 6DD had to be disallowed under section 40 A(3) of the Act and that genuineness of such payments was not provided as an exception under the exhaustive list of Rule 6DD.
5. The Ld. CIT(A) has erred in ignoring the findings of the Hon'ble ITAT, Amritsar in the case of Gurdas Garg in IT A No. 456(ASR)/2013 wherein it was held that Section 40A(3) of the Act and Rule 6DD had be read together and not separately as suited the assessee and that the rules prescribed were Rule 6DD of the Income Tax Rules, 1962 and nothing beyond that.”

2. Succinctly stated, the assessee who is engaged in the business of purchase/sale of wine on retail basis had filed his return of income for AY 2014-15 on 30.11.2014, declaring an income of Rs.23,55,830/- a/w agriculture income of Rs.3.50 lacs. Return of income filed by the assessee was thereafter processed as such u/s 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny assessment u/s 143(2) of the Act.

3. During the course of the assessment proceedings, it was, inter alia, observed by the AO that the assessee had during the year under consideration purchased wine from, viz. (i) M/s Rajasthan State Ganganagar Sugar Mills Ltd., Jaipur: Rs.76,82,921/-; and (ii).M/s Rajasthan State Beverages Corporation Ltd., Jaipur: Rs.1,37,31,676/-. On a perusal of the respective accounts of the aforementioned parties, it was observed by the AO, that the payment of the respective purchase consideration was made by the assessee to the aforesaid parties in cash. Backed by the aforesaid fact, the AO called upon the assessee to explain as to why the purchase consideration aggregating to Rs.2,07,24,418/- having been paid in contravention of the provisions of Sec. 40A(3) of the Act, may not be

disallowed. In reply, it was the claim of the assessee, that as the aforesaid payments were made to the Government departments, therefore, the same fell within the realm of the exception carved out in clause (b) of Rule 6DD of the Income Tax Rules, 1962, and were thus saved from the disallowance contemplated in Sec. 40A(3) of the Act. However, the AO was not persuaded to subscribe to the aforesaid claim of the assessee. Observing, that the aforementioned payments aggregating to Rs. 2,07,24,418/- (supra) were made by the assessee in contravention of the provisions of section 40A(3) of the Act, the AO disallowed the same. Accordingly, the AO after, inter alia, making the aforesaid disallowance of Rs. 2,07,24,418/- u/s 40A(3) of the Act, therein, vide his order passed u/s 143(3) of the Act, dated 23.12.2016 assessed the income of the assessee at Rs.2,36,97,340/- a/w agriculture income of Rs.3.50 lacs.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). After deliberating at length on the contentions advanced by the assessee, the CIT(A) concurred with his claim that the provisions of Sec. 40A(3) would not stand triggered as regards the payments in question. Observing, that as the assessee had made the payments to the

undertakings of the State Government of Rajasthan, which as per the judicial precedents relied upon by the assessee were to be considered as an arm of the State Government, and the said payments were made in legal tender, i.e., in Indian currency, the CIT(A) concluded that by virtue of the exception carved out in Rule 6DD(b) of the Income Tax Rules, 1962, the said respective amounts were not liable to be disallowed u/s 40A(3) of the Act. Backed by his aforesaid conviction the CIT(A) vacated the disallowance that was made by the A.O u/s 40A(3) of Rs. 2,07,24,418/- [1,37,31,676/- + Rs.69,92,742/-].

5. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. We have heard the Ld. Authorized Representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. Admittedly, the assessee who is engaged in the business of purchase/sale of wine on a retail basis had made cash payments in excess of amount of Rs.20,000/- for purchase of wine to, viz. M/s Rajasthan State Beverages Corporation Ltd.; and

Rajasthan State Ganganagar Sugar Mills Ltd. As observed by us hereinabove, the AO holding a conviction that the aforementioned payments made by the assessee were in contravention of the provisions of Sec. 40A(3) of the Act, had thus, disallowed the same. On appeal, the CIT(A), was of the view that as the payments in question were made by the assessee to Government undertakings, which were to be considered as an arm of the State Government, and had accepted the payment in legal tender, i.e., in Indian currency, therefore, the same fell within the realm of the exception contemplated in Rule 6DD(b) of the Income-tax Rules, 1962 and were thus saved from the disallowance u/s 40A(3) of the Act. Accordingly, the CIT(A) backed up his aforesaid deliberations vacated the disallowance of Rs. 2,07,24,418/- that was made by the AO by triggering the provisions of Sec. 40A(3) of the Act. For the sake of clarity, the relevant observations of the CIT(A) qua the issue in hand are culled out as under:

- “8. The submissions of the appellant have been considered and the circumstances of the case have been noted. There is no dispute to the fact that the cash payment has been made by the appellant for purchase of liquor. However, it is also not in dispute that such payments have been made to Undertakings of the Government of Rajasthan. The said Undertakings have to be considered as an arm of the Government in view

of the judicial precedent cited by the appellant and extracted herein above. Since the said Undertakings of the State Government of Rajasthan accepted cash payment for sale of liquor, there is a valid presumption that receipt of payment in legal tender i.e. Indian currency was not proscribed by any rules framed by the said Undertakings. It cannot be presumed that the Government undertakings shall indulge in activities which are prohibited by any rules made thereunder. Besides, the genuineness of the payment is not in doubt. The payment so made have been reflected in the TCS returns of the Govt. Undertakings and is also reflected in Form 26AS of the appellant. In the circumstances, it is held that the appellant is entitled to be exempted from the operation of the provisions of section 40A(3) by virtue of falling in the category of Rule 6DD(b). Accordingly, the disallowance and the consequent addition of Rs. 2,07,24,418/- [Rs. 1,37,31,676/- + Rs. 69,92,742/-] is directed to be deleted. The ground of appeal pertaining to this issue is thus treated as allowed.”

6. Controversy involved in the present appeal lies in a narrow compass, i.e., as to whether or not the CIT(A) is right in law and the facts of case, in concluding, that the cash payments made by the assessee towards purchase of wine to the aforementioned undertakings of the Government, viz. (i) M/s Rajasthan State Ganganagar Sugar Mills Ltd; and (ii) M/s Rajasthan State Beverages Corporation Ltd., which as per him were to be considered as an arm of the State Government that had received the payment in legal tender, i.e., in Indian currency, would by virtue of the exception carved out in Rule 6DD(b) of the Income Tax Rules, 1962 be saved from the disallowance contemplated in Sec. 40A(3) of the Act ?

Before proceeding any further, we deem it fit to cull out the provisions of sub-section (3) of section 40A 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.”

However, the legislature in all its wisdom had carved out certain exceptions in Rule 6DD of the Income Tax Rules, 1962, wherein, payments towards certain expenses, though made not as per the mandate of the provisions of section 40A(3) of the Act, would still be saved from the disallowance therein contemplated. As per Rule 6DD(b), where a payment is made by an assessee to the Government and, under the rules framed by it, such payment is required to be made in legal tender, then, no disallowance of such payment would be called for u/s 40A(3) of the Act. For the sake of clarity Rules 6DD(b) is culled out as under:

“**6DD.** No disallowance under sub-section (3) of section 40A shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-section (3A) of section 40A where a payment or aggregate of the 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 the cases and circumstances specified hereunder, namely :-

(a)

(b) where the payment is made to the Government and, under the rules framed by it, such payment is required to be made in legal tender; ”

In our considered view, for the purpose of adjudicating the issue in hand, i.e., as to whether or not the payment in question made by the assessee would be covered by the exception carved out in Rule 6DD(b) (supra), we have to first adjudicate on the issue as to whether the aforementioned entities to whom payments have been made by the assessee for purchase of wine, viz. (i) M/s Rajasthan State Beverages Corporation Ltd ; and (ii) M/s Rajasthan State Ganganagar Sugar Mills Ltd., would fall within the meaning of "Government", as provided in the aforesaid rule. We find that the issue as to whether or not a corporation could be said to be an instrumentality or agency of the Government had after exhaustive deliberations been looked into and adjudicated upon by a co-ordinate Bench of the Tribunal, viz. ITAT, Pune Bench "B", Pune in the case of Smt. Sapna Sanjay Raisonni v. ITO, Ward-2(1), Pune. In the aforesaid order, it was observed by the Tribunal that if a body was found to be an instrumentality or the agency of the Government, then, it would be an authority included in the term "State" under Article 12 of the Constitution of India. After referring to Article 12 of the Constitution of India, it was observed by the Tribunal that the definition of "the State" therein provided,

though inclusive and not exclusive, included, viz. (a). the Government and Parliament of India; (b). the Government and the Legislature of each of the States; (c). all local and other authorities within the territory of India; and (d). all local and other authorities under the control of the Government of India. Observing, that the term “other authorities” used in Article 12 was neither defined in the Constitution of India nor in any other statute, the Tribunal had drawn support from the interpretation of the said term by the Hon’ble Supreme Court in the case of Som Prakash Rekhi Vs Union of India, AIR 181 SC 212, wherein the Hon’ble Apex Court had culled out certain tests for determining as to when a corporation should be said to be an instrumentality or agency of the Government, which read as under :

- “1. If the entire share capital of the corporation is held by the Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of the Government.
2. Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.
3. Whether the Corporation enjoys monopoly status which is State conferred or State protected.
4. If the functions of the corporation are of public importance and closely related to governmental functions. It would be a relevant factor in classifying the corporation as an instrumentality or agency of the Government.

5. If a department of a Government is transferred to a corporation, it would be a strong factor supporting this inference of the corporation being an instrumentality or agency of the Government.”

Also, we find that the aforesaid order of the Tribunal had thereafter been followed by the ITAT, Bench “A”, Kolkata in the case of Narayan Rice Mills v. CIT, Burdwan, ITA No. 732/Kol./2015, dated 07.06.2017.

7. In the backdrop of our aforesaid deliberations, and applying the aforesaid tests laid down by the Hon’ble Apex Court in the case of Som Prakash Rekhi (supra), we are of the considered view, that as both of the aforesaid undertakings, viz. (i) M/s Rajasthan State Ganganagar Sugar Mills Ltd; and (ii) M/s Rajasthan State Beverages Corporation Ltd., are State Government Companies wherein 100% share holding is held by the State Government; there is an existence of deep and pervasive control of the State Government on the said undertakings, and the full control of their working, policy and framework is vested with the State Government, therefore, they can safely be brought within the meaning of “State”. As regards the requirements contemplated in Rule 6DD(b) that the payment is required to be made in legal tender, we find that the term “legal tender” has not been defined in the Income-Tax Act. However, the dictionary meaning of “legal tender” as mentioned in “Aiyer’s Law Terms and

Phrases”, is “the coinage of a country in which debts may be paid and which the creditor is bound to accept”. The dictionary meaning of the coin is; “metal used for the time being as money and stamped and issued by the authorities of the state in order to be used.” Therefore, it can be said that “legal tender” means the currency of a state which is to be used as money. Backed up our aforesaid observations, we are of the considered view, that as in the case of the assessee before us the payments in question to the aforementioned State Government undertakings have been made by the assessee in Indian currency, therefore, it can safely, or in fact inescapably be concluded that the same have been made in legal tender. In the backdrop of our aforesaid deliberations, we are of the considered view that the payments made by the assessee to the aforementioned Government undertakings, viz. (i) M/s Rajasthan State Ganganagar Sugar Mills Ltd; and (ii) M/s Rajasthan State Beverages Corporation Ltd., which could safely be held as a part of the Government would fall within the realm of the exception carved out in Clause (b) of Rule 6DD of the Income-Tax Rues, 1962, qua, the applicability of the provisions of Sec. 40A(3) of the Act. We, thus, in terms of our aforesaid observations finding no infirmity in the view taken by the CIT(A), who had rightly concluded that as

the payments in question made by the assessee to the State Government entities in legal tender were covered by the exception contemplated in Rule 6DD(b) of the Income Tax Rules, 1962, therefore, the same could not have been disallowed u/s 40A(3) of the Act, uphold his order.

8. Accordingly, filing no substance in the appeal filed by the Revenue before us, we dismiss the same.

9. Resultantly, the appeal filed by the Revenue is dismissed in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board.

Sd/-
(Dr. M.L. Meena)
Accountant Member

Sd/-
(Ravish Sood)
Judicial Member

Date: 21.02.2022

***GP/Sr./PS**

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T

True copy

By Order