

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “बी”, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCH ‘B’, CHANDIGARH

BEFORE SMT.DIVA SINGH, JUDICIAL MEMBER
AND SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

ITA No. 91/Chd/2021

(Assessment Year: 2016-17)

Sh.Sher Singh Rana, Rana Niwas, Chamba Ghat, Solan, Himachal Pradesh.	बनाम	Pr. Commissioner of Income Tax-I, Chandigarh.
स्थायी लेखा सं./PAN NO: ARDPR9901R		

निर्धारिती की ओर से/Assessee by : Shri Parikshit Aggarwal, CA

राजस्व की ओर से/ Revenue by : Shri Sarabjeet Singh, CIT

सुनवाई की तारीख/Date of Hearing: 10.02.2022

उद्घोषणा की तारीख/Date of Pronouncement: 28.02.2022

(Hearing through Webex)

आदेश/ORDER

Per Vikram Singh Yadav, Accountant Member:

This is an appeal filed by the assessee against the order of Learned Principal Commissioner of Income Tax-I, Chandigarh, [in short the ‘Ld.Pr.CIT’] dated 26.03.2021 pertaining to assessment year 2016-17.

2. Briefly, the facts of the case are that the assessee has filed his return of income declaring total income of Rs.5,10,381/- from his liquor trading business. The case of the assessee was selected for complete scrutiny for

examination of mismatch in sales turnover reported in audit report and ITR, and low income from TCS receipts (liquor). Notices u/s 143(2) & 142(1) of the Act were issued and after issuing final show cause notice dated 21.12.2018 and taking into consideration reply submitted by the assessee, the assessment was completed at total assessed income of Rs.9,09,855/- as against the returned income of Rs.5,10,380/-. Subsequently, the assessment records were called for and examined by the Ld. Pr.CIT and a show cause notice u/s 263 of the Act was issued on 20.02.2021 and after calling for submissions from the assessee, the assessment order passed by the AO u/s 143(3) of the Act was held to be erroneous in so far as prejudicial to the interest of the Revenue and the same was set aside to pass a fresh order after making necessary enquiries/investigations in the light of the discussion made in the impugned order after giving due opportunity to the assessee.

3. Against the said findings and the order of the Ld. Pr.CIT, the assessee is in appeal before us.

4. During the course of hearing, both the parties have drawn our reference to the findings of the Ld. Pr.CIT and

we, therefore, deem it appropriate to reproduce the same in *verbatim* as under:

“4. The facts of the case are that that the assessee has shown sundry creditor for Rs. 1,83,04,731/- in the name of M/s Rana Wines, L-1, Solan which also includes the liability of Rs. 1,11,42,804/- outstanding for the previous year.

4.1 Bogus Liability in 2014-15 (FY)

During F.Y. 2015-16, the assessee has shown following transactions with Rana Wines, L-1, Solan –

Opening Balance as on 01.04.2015	0
Purchases	Rs.2,34,33,281/-
Rebate & discount Received	Rs.18,43,550/-
Net Purchases	Rs.2,15,89,731/-
Payments	Rs.32,85,000/-
Closing Balance as on 31.03.2016	Rs.1,83,04,731/-

In balance sheet as on 31.03.2016, the assessee has shown Rana Wines L-1, Solan as Sundry Creditor for **Rs. 1,83,04,731/-**. As the assessee has shown Rana Wines, L-1, Solan as Sundry Creditors for Rs. 1,11,42,804/- as on 31.03.2015 and no such payment was made in the subsequent years. If the claim of the assessee regarding closing balance as on 31-03-2015 is accepted then the account will not balance. The assessee even did not declare any such liability in his return /Balance Sheet for the F.Y. 2015-16. Therefore, it is clear that the assessee has declared bogus liability in his Balance sheet for the F.Y. 2014-15. As the AO has failed to consider this the order issued by the assessing officer is erroneous and prejudicial to the interest of the revenue.

4.2 Payment of Liability in 2015-16

1. Payment of Rs. 72,00,000/- in cash

In Balance Sheet as on 31.03.2016, the assessee has shown Rana Wines L-1, Solan as sundry Creditor for Rs. 1,83,04,731/-. Out of this, the assessee has paid Rs. 72,00,000/- in cash to Rana Wines during F.Y. 2016-17. The assessee in its reply dated 27.12.2018, in para 3 has submitted

that payment of Rs. 72,00,000/- has been made in cash. The relevant para is reproduced as under:-

3. That there is sundry creditor in the name of M/s Rana Wines whose outstanding shown as on 31.3.2016 was Rs. 1,83,04,731/-. As the assessee has replied in para No. 8 to the annexure dated 4.12.2017 that no work was allotted to the assessee for the next year so the advance of Rs. 1.8 Crore was used for repayment of amount outstanding at the end of year. It is further submitted that the assessee has made repayment of Rs. 72,00,000/- to M/s Rana Wines during the next year i.e. A.Y. 2017-18. The assessee was not able to make the repayment of outstanding liability to M/s Rana Wines after 31.3.2017 due to weak financial position and later on father of the assessee Sh. Kashmir Singh Rana entered into an agreement dated 9.05.2017 to sell his land situated at Mehal Malyana, Tehsil Teera, Distt.Mandi(H.P.) to clear the liability/Debts of assessee with M/s Rana Wines. The copy of agreement is enclosed herewith.

The reply of the assessee clearly shows that the assessee has made payment in contravention of Section 40A(3) of the Act. The AO has not examined the case in view of section 40A(3) of the Act. As the AO has failed to consider this the order issued by the assessing officer is erroneous and prejudicial to the interest of the revenue.

2. Payment by sale of Property of father

Regarding balance payment of Rs. 1,11,04,731/-, the assessee submitted that his father Sh. Kashmir Singh sold a property for Rs. 1,25,00,000/- to Rana Wines on 09.05.2017 and this liability was discharged. The assessee only filed copy of an Ikrarnama as proof of this transaction. On perusal of this Ikrarnama, it is noted that this Ikrarnama was not registered as required under Transfer of property Act, 1883. Even this Ikrarnama does not bear the required Stamp Duty as required under the Indian Stamp Act, 1899. No copy of registered Deed is found placed on record.

Further, the assessee submitted that his father sold property as he was unable to discharge his liability. As per the balance sheet the assessee was having sufficient cash-in-hand as on 31.03.2016 to discharge his liability with the cash-in-hand, but this liability was discharged with sale of property by his father, therefore the cash-in-hand available in the books of account does not appear to be genuine. The only possibility is

that the liability of Rana Wines was made in cash by the assessee during F.Y. 2015-16 and these payments were in contravention to provisions of section 40A(3) of the I.T.Act, 1961. And to avoid any disallowance, he has submitted fictitious documents (Ikrarnama) before the Assessing Officer claiming that the property of the father has been sold. As the AO has failed to consider this the order issued by the assessing officer is erroneous and prejudicial to the interest of the revenue.

The assessee was not allotted licence for the next financial year. When the assessee was confronted that how the huge liability was paid and when it was paid, the assessee filed a copy of "Ikrarnama" showing that land valuing Rs. 1.25 Crore has been transferred to M/s Rana Wines. But the AO has not made any enquiry to prove that the document is genuine document or whether the land was actually transferred in the name of M/s Rana Wines. Further if the contention of the assessee is accepted that liability of sundry creditors has been paid off by transferring the land. It is seen from Ikrarnama that the land is in the name of father and the father of the assessee has paid off the liability of the assessee. Since the father of the assessee has no interest in the business of the assessee, the land so sold to Rana Wines is to be treated as gift in the hands of the assessee under section 56(2) of the Act and the assessee is liable to pay capital gain on sale/transfer of land in lieu of disposal of liability. As the AO has failed to consider this issue, the order issued by the assessing officer is erroneous and prejudicial to the interest of the revenue.

4.3 Confirmation Of Balance Of Rana Wines

The AO has also not verified the accounts of Rana Wines, Solan whether they have shown the debtor of Rs. 1,83,04,731/- in their books of account. Though the assessing officer has called for information under section 133(6) of the Act, but no information has been received from M/s Rana Liquor Solan and the AO has accepted the accounts of the assessee without verifying the genuineness of the accounts. As the AO has failed to consider this the order issued by the assessing officer is erroneous and prejudicial to the interest of the revenue.

4.4 Cash-in-Hand as per Balance Sheet

In Balance Sheet as on 31.03.2016, the assessee has declared advances at Rs. 1,80,00,000/-. It is

mentioned in assessment record that this amount represents cash-in-hand which was kept for License Fee of next year but he was not allotted any License for the next year. The licence fee is being paid to Government in the form of draft. Hence no cash in hand is required to be kept. The AO has however failed to consider this aspect and not verified whether the cash-in-hand is genuine or not, the order thus issued by the assessing officer is erroneous and prejudicial to the interest of the revenue.

4.5 Payment of Rs. 9,20,000/- in cash

On perusal of Ledger Account of Rana Wines L-1, Solan from Books of Accounts of Sh. Sher Singh, it has come to notice that the assessee has made payment of Rs. 9,20,000/- in cash to Rana Wines. This payment was made in contravention to provisions of section 40A(3) of the I.T.Act. The Assessing Officer has failed to take cognizance of these facts. No addition was made by the Assessing officer on account of provisions of section 40A(3) of the Act. This led to under assessment amounting to Rs. 9,20,000/- in this case. As the AO has failed to consider this the order issued by the assessing officer is erroneous and prejudicial to the interest of the revenue.”

5. Further the Ld. AR submitted that the Ld. Pr.CIT has passed the impugned order without taking into consideration the submissions which have been filed before him and our reference was drawn to the submissions so filed by the assessee before the Ld. Pr.CIT., which read as under:

“On Merits :-

2) *It is submitted that there is nothing wrong with the balance sheet of Sher Singh and Rana Wines for the F.Y2015-16 and 2016-17. It is submitted that your goodself has wrongly taken the details of sher singh with M/s Rana Wines L-l Solan for the F.Y 2015-16 as opening balance nil. It is submitted that during the F.Y 2015-16 relevant to A.Y 2016-17 M/s Rana Wines has got L-l at Solan(HP) and also L-2 & L-14 at Solan (HP) . The opening balance of Sher Singh for the F.Y 2015-16 with M/s Rana Wines L-l Solan is shown as Rs.*

1,11,42,804.40/- (Cr.) Similarly the opening balance of Rana Wines L-l for the F.Y 2015-16 with Sher Singh Solan is shown as Rs. 1,11,42,804.40/- (Dr.). The copies of ledger account from the Audit books of account of Sher Singh and M/s Rana Wines L-l are enclosed herewith. Meaning thereby your good office has wrongly taken the figures of Rs. nil as opening balance. The correct transactions of sher singh with M/s Rana wines L-l for the F.Y 2015-16 is as under:-

Opening balance as on 01/04/2015	Rs.1,11,42,804.40/-
Purchases during the year	Rs.1,71,52,313.00/-
Total	Rs.2,82,95,117.40/-
Less:- Rebate and discount	Rs.2,57,2700.00/-
Less:- Payments	Rs.74,17,686.00/-
Closing balance as on	Rs.1,83,04,731.00/-

From the above table it is very much clear that there was no bogus liability declared by the assessee in his balance sheet during F.Y 2014-15 and has correctly shown the balance with M/s Rana Wines.

Regarding payments of outstanding liability of Rs. 1,83,04,731/- with M/s Rana Wines as on 31/03/2016:

It is submitted that the assessee has paid Rs. 72,00,000/- to M/s Rana Wines L-l during the F.Y 2016-17 and remaining liability was discharged by executing an agreement dated 09/05/2017 regarding sale of property of Rs. 1.25 Crore in future date. It is submitted that the agreement of sale of property is a valid agreement with is notarized by notary public appointed by Govt, of India and there is no need to registered the agreement of sale under the transfer of property Act. As far as the copy of registered sale deed is concerned, it is submitted that the sale deed was to be executed upto 31/03/2019 as per terms of the agreement dated 09/05/2017 but the assessee and his father were not granted any further liquor business from the Excise Department of Punjab and Himachal and has suffered monetary loss in the draw/ lottery filed with the Excise Department to fetch liquor contract which he did not get. Due to the weak financial position of the assessee and his father, they did not discharged the liability and executed sale deed in favour of M/s Rana Wines L-l on the stipulated date i.e 31/03/2019 and the balance outstanding credit liability is still pending with M/s Rana Wines.

Regarding Imprest Account:-

It is submitted that the assessee has correctly shown sum of Rs. 7,80,00,000/- being advance in the Loan & Advances and the same is actually the imprest account maintained in the name of the assessee. It is submitted that the assessee is a liquor contractor and required to keep ready cash in the end of March for fetching liquor contract for next year; so the imprest account of Rs. 1,80,00,000/- was maintained in the books in the name of assessee for payment of license fee etc. for next year liquor contract which unfortunately not allotted and the money of imprest account was used for repayments to creditors etc. It is further submitted that there is no column in the Income Tax Return Form to show the entry of imprest account so the assessee has shown the same under the head "Advances" in the Current Assets annexure of the Audited balance sheet. It is further submitted that imprest is also sort of advances so the Chartered Accountant has correctly booked the entry under the head "Advances" in the Current Assets annexure in the balance sheet. The allegation of the department that this amount was used for repayment in cash to discharged the liability of M/s Rana Wine L-l in contravention to Section 40A(3) are absolutely wrong and completely denied. It is further submitted that the imprest account was used by the assessee for purchasing lotteries/draw with the Excise liquor department of Punjab and Himachal in the F.Y 2017-18 for getting liquor contract but not succeeded and suffered huge monetary loss for non-awarded of any liquor contract.

Regarding cash payment of Rs. 9,20,000/- to M/s Rana Wines:

It is submitted that the assessee was under pressure from M/s Rana Wines L-l Solan regarding huge outstanding in the name of the firm and said firm has forcibly taken cash from the liquor vends of the assessee on the last date of the year and assessee was left with no alternative and was forcibly compelled to make payment of Rs. 9,20,000/- under exceptional circumstances which were not in his control. It is submitted that it is a genuine transactions as both the assessee as well as M/s Rana Wines L-l are permanent Income Tax Assessee and both has shown the transactions in their books of account which are audited by Chartered accountant and paid Income tax thereon. These transactions can be verified from the books of both assessee and M/s Rana Wines. There is thus no contravention to provisions of Section 40A(3) of I.T. Act 1961."

6. It was submitted by the Ld. AR that firstly on the issue of bogus liability for financial year 2014-15, there is no basis for arriving at such a finding by the Ld. Pr.CIT as she has failed to consider the entries in the ledger account so submitted by the assessee wherein she has failed to consider opening balance of Rs.1,11,42,804/- which has been taken as nil by the Ld. Pr.CIT, whereas if it look at ledger account of M/s Rana Wines, L-1, Solan, the same is clearly appearing as opening balance and it seems that the Ld. Pr.CIT has considered the said opening balance as part of the purchases figure of Rs.2,34,33,281/-. It was further submitted that the assessee was having regular purchases from M/s Rana Wines, L-1, Solan in the earlier year as well as in the year under consideration and payments have been made during the year, which is also evident from the figures reproduced by the Ld. Pr.CIT. It was submitted that, therefore, the finding of the Ld. Pr.CIT that no payments had been made to M/s Rana Wines, L-1, Solan, is not factually correct. It was further submitted that the year under consideration is financial year 2015-16 relevant to assessment year 2016-17 and the liability towards M/s Rana Wines, L-1, Solan, which have been alleged as bogus liability, pertains to the financial year 2014-15 relevant to assessment year 2015-16. Therefore, as far as the year

under consideration is concerned, there is no basis for arriving at the finding that the AO has failed to consider the said matter and, therefore, the order so passed by the AO cannot be held as erroneous and prejudicial to the interest of the Revenue.

7. It was further submitted that regarding the discharge of the liability of closing balance of Rs.1,83,04,731/-, the Ld. Pr.CIT has stated that the assessee has paid Rs.72 lacs in cash to M/s Rana Wines, L-1, Solan during financial year 2016-17 and, therefore, the provisions of section 40A(3) of the Act are attracted. It was submitted that there is no dispute that the assessee has made cash payment of Rs.72 lacs to M/s Rana Wines, L-1, Solan but that payment has been made in subsequent financial year 2016-17 relevant to assessment year 2017-18 and, therefore, as far as the year under consideration is concerned, the said matter has no bearing on the assessment order so passed by the AO and, therefore, the order so passed by the AO cannot be held as erroneous and prejudicial to the interest of the Revenue. Similarly, it was submitted that regarding the balance payment of Rs.1,11,04,731/- in respect of which the assessee has submitted that this liability was discharged by executing an agreement dated 09.05.2017 for a sum of Rs.1.25 crores, it again pertains to financial year 2017-18

relevant to assessment year 2018-19 and it has no bearing for the assessment order passed for the year under consideration.

8. Regarding the balance confirmation from M/s Rana Wines, L-1, Solan amounting to Rs.1,83,04,731/-, it was submitted that the assessee has duly submitted copy of the ledger account of M/s Rana Wines, L-1, Solan in its books of accounts before the AO, which was duly verified by him and during the course of revisionary proceedings before the Ld. Pr.CIT, the copy of the ledger account of the assessee in the books of M/s Rana Wines, L-1, Solan were submitted and which also find mention in the Paper Book so submitted by the assessee and as can be seen, the balances in the books of the assessee company are tallying with the balances in the books of M/s Rana Wines, L-1, Solan and the Ld. Pr.CIT has failed to state how the order so passed by the AO can be held to be erroneous and prejudicial to the interest of the Revenue.

9. Regarding the cash in hand of Rs.1.80 crores, it was submitted that there is no basis for arriving at the finding by the Ld. Pr.CIT that there was no need for the assessee to keep cash in hand. It was submitted that the said finding is clearly based on presumption and assumption and it is the

prerogative of the assessee whether he wants to keep cash in hand or deposit in the bank account and the same depends on the business exigencies and cannot be challenged by the Ld. Pr.CIT and in any case, the fact that there was cash in hand of the assessee was duly disclosed in financial statement and books of account which have been duly verified and examined by the AO, there is no basis to hold that the order so passed by the AO is erroneous and prejudicial to the interest of the Revenue.

10. Regarding payment of Rs.9,20,000/- in cash to M/s Rana Wines, L-1, Solan during the year under consideration, it was submitted that the assessee was under pressure from M/s Rana Wines, regarding huge outstanding and, therefore, left with no alternative, he was compelled to make payment of Rs.9,20,000/- under consideration which were beyond his control and, therefore, there was no contravention of the provisions of section 40A(3) of the Act. It was submitted that necessary explanation was submitted before the Ld. Pr.CIT and he has failed to consider the same while passing the impugned order. Without prejudice, it was submitted that if at all, the order of the AO has to be set aside then the same can be set aside for the limited purpose of examining the explanation so submitted by the assessee before the Ld. Pr.CIT.

11. Further, the Ld. AR has relied upon the Coordinate Bench decision in the case of Abhimanyu Gupta Vs. Pr.CIT, ITA No.771/Chd/2017, dated 09.04.2018 and the decision of Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Sohana Woollen Mills, 296 ITR 238.

12. Per contra, the Ld. CIT DR relied upon the findings of the Ld. Pr.CIT and our reference was drawn to two specific findings of the Ld. Pr.CIT. Firstly, regarding the balance confirmation of M/s Rana Wines, L-1, Solan amounting to Rs.1,83,04,731/-, it was submitted that during the course of assessment proceedings though the AO has called for the information u/s 133(6) of the Act, no information has been received from M/s Rana Wines, L-1, Solan and, therefore, the AO has merely relied upon the submissions so filed by the assessee without verifying the same independently from M/s Rana Wines, L-1, Solan and, therefore, the Ld. Pr.CIT has rightly held that the AO has accepted the accounts of the assessee without verifying the genuineness of the accounts with M/s Rana Wines, L-1, Solan.

13. It was further submitted that regarding the cash payment of Rs.9,20,000/-, the same is clearly evident from the perusal of the ledger account of M/s Rana Wines, L-1, Solan in the books of the assessee and inspite of that, there

is no examination or verification which has been undertaken by the AO or any query which has been raised by the AO and, therefore, as far as the payment of Rs.9,20,000/- in cash, the same is clearly in violation of section 40A(3) of the Act and, therefore, the Ld. Pr.CIT was right in holding that the AO has failed to consider the said violation and the order so passed by the AO, therefore, is clearly erroneous and prejudicial to the interest of the Revenue.

14. We have heard the rival contentions and perused the material available on record. Firstly, the ld PCIT has held that the assessee has shown bogus liability of Rs 1,11,42,804/- towards Rana Wines L-1, Solan in his balance sheet for the financial year 2014-15 and the AO has failed to consider this matter and therefore, the order so passed by the Assessing officer for the impugned assessment year is erroneous and prejudicial to the interest of the Revenue. The basis of arriving at such a finding by the ld PCIT is that the assessee has shown nil opening balance towards Rana Wines L-1 Solan in its books of accounts as on 1.04.2015 and has not made any payment towards such liability in the subsequent years. In his submissions, the assessee has submitted that he has shown opening balance of Rs 1,11,42,804/- towards Rana Wines L-1, Solan in his balance sheet for the financial year 2015-16

and apparently, the ld PCIT has wrongly considered the opening balance as part of purchases during the year. Secondly, it has been submitted that the payments to the tune of Rs 32,95,000/- have been made during the year and therefore, it is incorrect to state that no payments have been made during the year. We have gone through the ledger account of Rana Wines L-1 Solan and find that there is an opening balance of Rs 1,11,42,804/-, fresh purchases during the year amounting to Rs 1,22,90,477/-, rebates and discounts amounting to Rs 18,43,550/-, payments made during the year amounting to Rs 32,85,000/- and the closing balance amounting to Rs 1,83,04,731/- and therefore, where the liability continues to exist in the books of accounts and there are payments made during the year under consideration, the liability cannot be said to cease to exist during the year under consideration. It is not the case of the Revenue either that it is a case of remission of liability during the year under consideration. In any case, what the ld PCIT has alleged is that the liability towards Rana Wines L-1, Solan is a bogus liability which has been incurred and pertains to the financial year 2014-15 relevant to assessment year 2015-16. Therefore, the implications, if any, arising out of such liability where so claimed by the assessee, and which the AO is at liberty to examine as per

law and where held to be bogus will be relevant for the assessment year 2015-16 and not for the impugned assessment year 2016-17 and on this account, the order so passed by the AO for the impugned assessment year 2016-17 therefore cannot be held to be erroneous in so far as prejudicial to the interest of the Revenue.

15. Now, coming to discharge of outstanding liability of Rs. 1,83,04,731/- as on close of the financial year 2015-16 relevant to assessment year 2016-17, it is an admitted position that the same has been partly discharged by way of cash payment of Rs 72,00,000/- during the subsequent financial year 2016-17 relevant to assessment year 2017-18. The ld PCIT has held that the assessee has made the payments in contravention of section 40A(3) and since the AO has not examined this matter, the order so passed is erroneous in so far as prejudicial to the interest of Revenue. We find that where the payment itself has not been made in the financial year relevant to impugned assessment year, basis of arriving at the finding by the ld PCIT that there is a contravention of provisions of section 40A(3) is not clear from the impugned order where the applicability of said provisions itself is in doubt. The implications, if any, in respect of discharge of liability in cash in the subsequent financial year 2016-17, a liability which has been incurred

in current financial year will arise u/s 40A(3A) and not under section 40A(3), and the AO will be at liberty to examine the same as per law for the assessment year 2017-18 and not for the impugned assessment year 2016-17. Similar is the situation relating to discharge of remaining outstanding liability by way of entering into an agreement to sell dated 9.05.2017 which again falls in financial year 2017-18 relevant to assessment year 2018-19 and the implications, if any will arise in the financial year 2017-18 and the AO is at liberty to examine as per law for the assessment year 2018-19 and not for the impugned assessment year 2016-17. Therefore, where the AO has not examined the implications relating to discharge of outstanding liability which has evidently happened in the subsequent financial years, the order so passed by the AO for the impugned assessment year 2016-17 cannot be held to be erroneous in so far as prejudicial to the interest of the Revenue.

16. Regarding confirmation of balance in the account of Rana Wines, Solan, the ld PCIT has stated that though the assessee has shown outstanding liability of Rs 1,83,04,731/- towards Rana Wines, Solan in his books of accounts, the AO has not independently verified the accounts of Rana Wines, Solan to verify whether they have

shown the assessee as debtor in its books of accounts to the tune of Rs 1,83,04,731/-. In this regard, it is noted that the AO did call for information u/s 133(6) from M/s Rana Wines to confirm the balances during the course of assessment proceedings, however, it is also a fact that at the time of passing of the assessment order, only the ledger account of Rana Wines in books of the assessee was available and the confirmation from Rana Wines was not received and during the course of revisionary proceedings, ledger account of the assessee in the books of Rana wines was submitted for the first time before the ld PCIT and as per both the ledger accounts, the balances in books of the assessee as well as in the books of Rana Wines are tallying and the ld PCIT has failed to highlight any discrepancies in the two accounts. Therefore, on this account, where there is no dispute which has been raised by the ld PCIT regarding the purchases made by the assessee from Rana Wines during the year under consideration having not been examined by the AO and account balances in respective books of accounts are also matching and no discrepancy has been highlighted, the order so passed by the AO cannot be held to be erroneous in so far as prejudicial to the interest of Revenue.

17. Coming to cash payment of Rs 9,20,000/- to Rana Wines during the year under consideration, the ld PCIT has

stated that the assessee has made the payment in contravention of section 40A(3) and the AO has failed to examine and take cognizance of the said fact and which has resulted in underassessment to the tune of Rs 9,20,000/- and the order so passed by the AO was held to be erroneous in so far as prejudicial to the interest of Revenue. During the course of hearing, the ld CIT DR submitted that the same is clearly evident from the perusal of the ledger account of M/s Rana Wines, L-1, Solan in the books of the assessee and inspite of that, there is no examination or verification which has been undertaken by the AO or any query which has been raised by the AO and, therefore, as far as the payment of Rs.9,20,000/- in cash, the same is clearly in violation of section 40A(3) of the Act. In response, the ld AR submitted that the assessee was under pressure from M/s Rana Wines, regarding huge outstanding and, therefore, left with no alternative, he was compelled to make payment of Rs.9,20,000/- under consideration which were beyond his control and, therefore, there was no contravention of the provisions of section 40A(3) of the Act. It was submitted that necessary explanation was submitted before the Ld. Pr.CIT and he has failed to consider the same while passing the impugned order. Without prejudice, it was submitted that if at all, the order of the AO has to be

set aside then the same can be set aside for the limited purpose of examining the explanation so submitted by the assessee before the Ld. Pr.CIT.

18. On perusal of the ledger account of Rana Wines Solan in the books of the assessee, it is evident that the assessee has made cash payment of Rs 9,20,000/- to Rana Wines during the year under consideration and we find that there is no query raised or any examination which has been carried out by the AO in terms of implications arising u/s 40A(3) of the Act, the provisions of which are prima facie attracted in the instant case unless the explanation submitted by the assessee in terms of business exigency is examined and accepted which has been submitted for the first time before the ld PCIT. Therefore, to this extent, where the implication arising u/s 40A(3) has not been examined by the AO, we believe that the order so passed by the AO has to be held to be erroneous and prejudicial to the interest of the Revenue and therefore, to this limited extent, we upheld the order of the ld PCIT and the order of the AO has to be set aside for the limited purpose of examining as per law the implications u/s 40A(3) in respect of cash payments of Rs 9,20,000/- and explanation so submitted by the assessee in support of business exigency.

19. Lastly, whether the assessee is required to keep cash in hand or deposit in the bank account, the same will depend upon the business exigency prevailing at the relevant point in time and so long as there is no discrepancy pointed out in the books of accounts where the cash in hand has been duly recorded and physical cash-in hand, the order so passed by the AO cannot be held to be erroneous in so far as prejudicial to the interest of Revenue.

20. In the result, the appeal of the assessee is partly allowed in light of aforesaid directions.

Order pronounced on 28.02.2022.

Sd/-
(DIVA SINGH)

**न्यायकि सदस्य/Judicial Member
Member**

Dated: 28.02.2022

रती

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar

Draft dictated	16.02.2022	Sr.PS
Draft placed before author	17.02.2022	Sr.PS
Approved Draft comes to the Sr.PS/PS		Sr.PS
Order signed and pronounced on		
File sent to the Bench Clerk		Sr.PS
Date on which file goes to the AR		
Date on which file goes to the Head Clerk.		
Date of dispatch of Order.		

