

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH
(Conducted Through Virtual Court)
**Before: Ms. Annapurna Gupta, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 538/Ahd/2019
Assessment Year 2013-14**

M/s. P. Gautam & Co, Ahmedabad PAN: AACFP2004M (Appellant)	Vs	Dy. CIT, Circle-5(2), Ahmedabad (Respondent)
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Assessee by: Shri Jyotish M. Shah, A.R.
Revenue by: Shri Shibaji Simlai, Sr. D.R.

Date of hearing : 01-03-2022
Date of pronouncement : 13-04-2022

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This is an appeal filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-5, Ahmedabad in Appeal no. CIT(A)-5/DCIT Cir. 5(2)/10230/2017-18 vide order dated 28/02/2019 passed for the assessment year 2013-14.

2. The assessee has raised following grounds of appeal:-

"1. Invalid & Bad Order

- a. *The order dated 28-02-2019 passed by Commissioner of Income Tax (Appeals) 5, Ahmedabad confirming disallowance u/s 40A(3), is invalid & bad in law as it is violating principles of natural justice.*
- b. *The CIT (A) erred in not dealing with written submission filed in its proper perspective.*
- c. *The CIT (A) erred in not dealing with judgments relied & filed, d. The order passed by CIT (A) is non speaking order.*

2. Without prejudice on merits

Disallowance of expenses u/s 40A(3) - Rs. 32,65,805/-

- a. *The CIT (A) erred in confirming disallowance of expenditure Rs.32,65,805/- u/s 40A(3) holding that there were no exceptional circumstances covered by the proviso of Section.40A(3) of the Act.*
- b. *The CIT (A) erred in stating that factual position examined by the AO has no explanation by the appellant.*
- c. *The CIT (A) erred in not dealing with written submission that on facts of the case there was no alternative for Appellant to make payment other than in cash. There was reasonable cause.*
- d. *The order passed by CIT (A) without considering and dealing with the case laws relied and copies filed, is unjustified & illegal.*
- e. *The action of CIT (A) to confirm disallowance of expenditure of Rs.32,65,805/- u/s 40A(3) is invalid & bad in law on facts & law.*

3. *The appellant craves for leave to add, alter or amend all or any grounds before final hearing of this appeal.”*

3. The brief facts of the case are that the assessee filed return of income declaring total income of Rs. 42,68,304/-. The case was selected for scrutiny and the ld. A.O. inquired why certain expenses amounting to Rs. 32,65,805/- should not be disallowed u/s. 40A(3), being in excess of limit

specified under the Act. These payments were made for printing advertisements to various publications as tabulated below:-

Sr. No.	Name of the Payee Party	Amount (In Rs.)
1	Indian Express Newspaper Ltd.	3,36,600
2	Sandesh Ltd.	7,37,100
3	Lok Prakashan	17,74,980
4	Gujarat Mitra Ads	4,17,125
Total		32,65,805

In his reply, the assessee submitted as under:-

“7.5 In his reply, the assessee has taken the following plea:

- 1. That the advertisement was released in the evening at 7PM and banking hours were over and there was no chance to get demand draft or pay cheque.*
- 2. That the newspapers have confirmed that they have accepted cash payment for printing advertisement of political parties.*
- 3. That the newspapers have also confirmed that for political parties advertisement they refused to accept printing orders, otherwise than for payment made in cash.”*

The Id. A.O. rejected the assessee’s plea by holding that assessee has not been able to substantiate why payments could not be made by account payee cheque. The Id. A.O. held that assessee’s reliance on P & H decision in the case of Balkrishna Jagdish Chandra 213 CTR 174 which is to the effect that

payment after banking hours is allowable, is misplaced since the assessee has not been able to prove that there was any business exigency which necessitated payments after banking hours. Regarding the second plea of assessee that the newspapers have confirmed that the parties have accepted cash payments for printing advertisements of political parties and for which assessee placed reliance on the case of J. Rajmohan Pillai 267 ITR 561, the ld. A.O. held that the above decision was rendered in respect of erstwhile rule 6DD(j), which provisions are no longer in existence for the assessment year under consideration. On the third plea of the assessee that newspapers have confirmed that they refused to accept printing order otherwise than for payment in cash for political parties and for which reliance was placed in the case of Satpal Jain 79 TTJ 444 (Delhi ITAT), the A.O. held that the statement of the assessee is factually incorrect. From perusal of the letters issued by publishing houses, it is nowhere mentioned that they refused to accept payments otherwise than by cash. The parties have not confirmed that they had imposed any such conditions that the payments of political advertisements was to be accepted in cash only. Accordingly, the ld. A.O. held that the cash payments amounting to Rs. 32,65,805/- are not covered in any of the exceptions provided under Rule 6DD and therefore assessee has made contravention of section 40A(3) of the Act and accordingly, he disallowed the same.

4. In appeal before ld. CIT(A), he dismissed the assessee's appeal and confirmed the addition of Rs. 32,65,805/- made in contravention of Section 40A(3) of the Act by observing as below:-

“7.9. Thus it is evident from the facts mentioned above that there is no extra ordinary circumstances and justification for making payment in cash to the news papers in the year under consideration. There is no terms and condition or agreement which says that only cash payment for advertisement from political party will be accepted. It is also noticed that in the earlier year or subsequent year no such payment was made in cash to the media houses. The situation and condition in the appeal under consideration is nowhere covered by the exceptional circumstances mentioned in proviso of section 40A(3) of the Act. The AO in the assessment order has examined the factual position and the contention of the appellant in detail for which the appellant has no explanation. The case law relied on by the appellant are not applicable in the facts and circumstances of the appeal under consideration. In view of the above factual and legal discussion, the disallowance made by the AO is confirmed.

Thus the ground of appeal is dismissed.”

5. Before us, the counsel for the assessee submitted that the payments in cash were made since firstly, payments were made to newspapers for political advertisements and secondly, payments were made after banking hours at 7.00 P.M. At the relevant time, elections were going in the state of Gujarat and for this purpose, payments were made to newspaper companies for political advertisements and they refused to accept payment through any other mode than by way of cash payment. The ld. counsel for the assessee drew our attention to pages 33 to 39 of the paper book which is to the effect that newspaper companies have confirmed receipts of payment in cash against election advertisements and further since payments were made after banking hours, the parties insisted on payments being made in cash. The Ld. counsel for the assessee drew our attention to page 18 of paper book in support of his contention that even the auditors specifically certified the circumstances under which payments were required to be made in cash. The

ld. counsel for the assessee submitted that the assessee had no option but to make payment in cash. The ld. Assessing Officer has not doubted the identity of the parties and business exigency is proved. The Ld. counsel for the assessee drew our attention to decision of Ahmedabad ITAT in the case of Vimal Micrones ITA No. 1887/Ahd/2013 wherein it was held that where genuineness of the payment and the identity of the payee is not doubted, additions u/s. 40A(3) should be deleted. He further placed reliance on several other decisions in support of arguments put before us.

6. In response, the ld. DR submitted that it is nowhere mentioned that any of the parties refused to accept payments other than in cash. The ld. D.R. drew our attention to para 7.8 and 7.9 of CIT(A)'s order that opportunity was given to the assessee to justify the extra-ordinary circumstances as to why payments in cash were necessitated, but assessee has not been able to bring forth such extra-ordinary circumstances. There is nothing on record to prove that the orders for publication were given by assessee after office hours. The assessee has not made similar payments in any prior or further Assessment Year.

7. We have heard the rival contentions and perusal the material on record. The Ld. counsel for the assessee has relied on the case of **KGLNetwork (P.) Ltd. v. ACIT [2018] 97 taxmann.com 400 (Delhi - Trib.)** where it was held that where in course of business, assessee made payments to various airlines in excess of Rs. 20,000 by cash, in view of fact that payees were reputed airlines having PAN and, moreover, genuineness of payments had not been doubted by revenue authorities, no disallowance

could be made under section 40A(3). The Apex Court in case of **Attar Singh Gurmukh Singh v. ITO [1991] 191 ITR 667/59 Taxman 11** observed that "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. In the case of **Anupam Tele Services V. ITO [2014] 43 taxmann.com 199 (Gujarat)**, the Gujarat High Court held where principal company insisted that on payment by cheque supply would be delayed, cash payment made by agent in bank account of principal had to be allowed. In the case, assessee was working as an agent of Tata Tele Services Limited for distributing mobile cards and recharge vouchers. The Principal company Tata insisted that cheque payment from assessee's co-operative bank would not do, since realization took longer time and such payments should be made only in cash in their bank account. If assessee would not make cash payment and make cheque payments alone, it would have received recharge vouchers delayed by 4/5 days which would severely affect its business operation. The assessee, therefore, made cash payment. The Gujarat High Court held that in view of above circumstances of the case, no disallowance under section 40A(3) was to be made in respect of payment made to principal. In the case of **Sri Laxmi Satyanarayana Oil Mill v. CIT [2014] 49 taxmann.com 363 (Andhra Pradesh)**, assessee made certain payment for purchase of ground nut in cash exceeding prescribed limit. The assessee submitted that he made payment in cash because seller insisted on that and also gave incentives and discounts. Further, seller also issued certificate in support of this. The High Court held that since assessee had placed proof of payment of consideration for its transaction to seller, and later admitted payment and there was no

doubt about genuineness of payment, no disallowance could be made under section 40A(3). Division Bench of the Rajasthan High Court in case of **Smt. Harshila Chordia v. ITO [2008] 298 ITR 349 (Raj)** had observed that the exceptions contained in Rule 6DD are not exhaustive and that the said rule must be interpreted liberally. In view, of the ratio laid down in the above judicial precedents, we are of the considered view that in the facts of the instant case, no disallowance u/s 40A(3) is called for. The assessee has identified the parties to whom payments were made. The parties have confirmed receipt of payment in cash. The assessee has laid down the circumstances which necessitated payments in cash, being payment for advertisement for political parties on account of State elections, outside of banking hours. In a few instances, the assessee has obtained letter from the parties to the effect that it was at their insistence that cash payment was made. From the ratio of judicial precedents, it may be inferred exceptions contained in Rule 6DD are not exhaustive and that the said rule must be interpreted liberally, depending upon business necessities and facts and circumstances of the case. In the result, we are of the view that the Ld. CIT(A) erred in law and in facts in disallowing the sum of Rs. 32,65,805/- u/s 40A(3) of the Act in the instant set of facts.

8. In the result, assessee's appeal is allowed.

Order pronounced in the open court on 13-04-2022

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Ahmedabad : Dated 13/04/2022

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

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

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद