

**IN THE INCOME TAX APPELLATE TRIBUNAL
CIRCUIT 'SMC' BENCH, VARANASI**

BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER

**ITA No.55/VNS/2018
Assessment Year: 2013-14**

Manoj Mishra, Sultanpur, Ramnagar, Varanasi, U.P. PAN-AWIPM2469F	v.	Income Tax Officer, Ward-3(3), Chandauli
(Appellant)		(Respondent)

Appellant by:	Sh. Prasant Pandey, Adv
Respondent by:	Sh. A.K. Singh, Sr. DR
Date of hearing:	21.03.2022
Date of pronouncement:	21.03.2022

ORDER

SHRI VIJAY PAL RAO, JUDICIAL MEMBER:

This appeal by the assessee is directed against the order dated 22.6.2018 of CIT(A), Varanasi for the assessment year 2013-14. The assessee has raised the following grounds:-

- 1. Selection of case under Computer Aided Scrutiny Scheme (CASS) was wholly illegal as the same is not based upon the objective opinion of the Assessing Officer, validity of issuance of notice under section 143(2) of the Act by the Assessing Officer upheld by the "CIT(A)" is bad in law.*
- 2. Payment for sums aggregating to Rs. 4,38,737/- made in cash on 13.12.2012 to*

<i>Sl No.</i>	<i>Name and address of the vendor</i>	<i>Head of expenditure</i>	<i>Date</i>	<i>Amount</i>
1.	<i>M/s Jai Bhole Shankar Industries Mahadev Nagr, Katni</i>	<i>Purchases</i>	<i>13.12.2012</i>	<i>2,06,968</i>
2.	<i>M/s Commander Industries Pvt. Ltd.</i>	<i>Purchases</i>	<i>13.12.2012</i>	<i>2,31,869/-</i>
			<i>Total</i>	<i>4,38,737</i>

was on account of genuine business need of the appellant (there being no dispute about the payment), disallowance made by the Assessing Officer as also affirmed by "CIT(A)" is bad in law.

- 3. Payment made by the appellant in cash could not have been adversely viewed by the authorities below as there is no dispute regarding availability of funds with the*

appellant on the date of payment as also for the reason that the same was made due to business exigency.

4. After having accepted the fact that M/s Jai Bhole Shankar Industries and M/s Commander Industries Pvt. Ltd. (being identified supplier of cattle feed to the appellant) disallowance made by invoking section 40A(3) of the Act is against the principle of business expediency.

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5. Ground Nos. 2, 3 and 4, after having accepted the fact that the appellant had been maintaining regular books of account which were audited too, disallowance of Rs. 4,38,737/- could not have been made by the Assessing Officer as also sustained by the "CIT(A)" after having accepted books of account and other records.

6. The order appealed against is contrary to the facts, law and principles of natural justice."

2. Ground no. 1 is regarding the validity of initiation of scrutiny assessment by issuing notice under section 143(2) under CASS.

3. The only contention of the learned AR is against the notice issued under section 143(2) is that when the case of the assessee was selected under Computer Aided Scrutiny Scheme (CASS) then the notice under section 143(2) is not based on the AO's objective opinion which is wholly illegal and consequentially the assessment order passed under section 143(3) is liable to be quashed being null and void.

4. On the other hand, learned DR has submitted that the requirement of issuing notice under section 143(2) is mandated under the statute and without issuing the notice under section 143(2) the Assessing Officer cannot proceed with the assessment. He has relied upon the orders of the authorities below.

5. Having considered the submissions of the learned AR as well as learned DR, I am of the considered opinion that irrespective of the selection of the case for scrutiny assessment either under the CASS or by the Assessing Officer himself a notice under section 143(2) is a mandatory pre condition for initiation of the

scrutiny assessment proceedings. It is a jurisdictional condition and therefore, the assessee cannot challenge the notice issued under section 143(2) on the ground that the case of the assessee was selected under CASS. Hence, I do not find any merit or substance in the ground no. 1 of the assessee, the same is dismissed.

6. Ground Nos. 2 to 5 are regarding the disallowance made by the Assessing Officer under section 40A(3) of the Act.

7. The learned AR of the assessee has submitted that the assessee is an individual and derives income from the business of cattle feed made of agricultural waste and buy products from the crops like wheat, rice and pulses etc.,. The assessee is doing the business under the proprietorship in the name and style of M/s Goukul Ji Aahar. He has further contended that the CIT(A) has not disputed the genuineness of purchases made by the assessee and the books of accounts of the assessee were also accepted therefore, the disallowance made under the provisions of section 40A(3) is not justified when the purchases are not doubted. In support of his contention, he has relied upon the decision of Hon'ble Calcutta High Court in the case of CIT vs CPL Tannery 318 ITR 179 and submitted that owing to the business expediency, obligation and exigency, the assessee had to make cash payment for purchase of goods so essential for carrying on the business the same falls under the exception as provided under Rule 6DD. The learned AR has also relied upon the decision of Hon'ble Supreme Court in the case of Attar Singh Gurmukh Singh vs. ITO 1991 AIR 2109 and submitted that the Hon'ble Supreme Court has observed that the genuineness and *bonafide* nature of transaction of the assessee are not disputed and assessee is able to show that there was business exigency for payment in cash for purchase of goods necessary for business then the assessee would be entitled to get relief from applicability of provisions of section 40A(3) of the Act. The learned AR has thus submitted that

the case of the assessee falls in exception contained in Rule 6DD which is not exclusive but the said rule has to be interpreted liberally.

8. On the other hand, the learned DR has submitted that the purchase of stock in trade from the two parties were disallowed by the Assessing Officer. The assessee has been regularly purchasing from these two parties and there is no claim of non availability of banking facility but these parties are having bank accounts. Therefore, the assessee has not made out a case falling under the exception. Nothing has been brought on record to show that except cash payment, the assessee was not having any other option. The learned DR has relied upon the orders of the authorities below and submitted that the learned CIT(A) has relied upon the judgment of Hon'ble Supreme Court as well as the Hon'ble High Court.

9. I have considered the rival submissions as well as relevant material available on record. There is no dispute that the assessee has made a purchases of Rs. 4,38,737/- from two parties namely M/s Jai Bhole Shankar Industries and M/s Commander Industries Pvt. Ltd. It is not the case of the assessee that the purchases were made either from the farmers or from the rural areas but these purchases are made from the dealers of the goods in which the assessee is doing retail business. The assessee has explained the reasoning for cash payment for these purchases as business expediency and exigency. There is no claim on the part of the assessee that these parties are not having bank account or banking facilities were not available with the vendors. Even otherwise when the suppliers are the dealers and one of them is a private limited company then the question of not having a bank account by them or banking facility in the area does not arise. The only question arises is whether the assessee was having no other option but to make the payment so that it can fall in the ambit of exception provided in Rule 6DD. The CIT(A) has decided this issue in para 10 to 17 as under:-

10. A perusal of ledger account of Jai Bhole Shankar Industries reveals that appellant is a regular customer of this concern. Total purchases of Rs. 14,39,744/- has been claimed to have been made and all payments have been made through cheque. None of the cheques issued have bounced. The payments through cheques have been made on a regular basis. Till the date when cash of Rs. 2,06,968/- was allegedly paid on the insistence of the party, the appellant has made total purchase of Rs. 7,90,804/- and payment through cheque of Rs. 5,69,220/- was made. On subsequent date also, the payments have been made through cheques and none the cheques have bounced.

A handwritten signature in black ink is written over a circular stamp. The signature appears to be 'Manoj Mishra'. The stamp is partially obscured by the signature but contains some illegible text.

11. A perusal of ledger account of Commander Industries Pvt Ltd reveals that the appellant is a regular customer of this concern also from whom purchase of Rs. 10,94,523/- has been made in the relevant F.Y. and entire payment for purchases amounting to RS. 6,60,376/- has been made through cheque except for a cash payment of Rs. 2,31,869/-. None of the cheques have bounced in this case also, on the date when alleged cash was made, total purchase of Rs. 45,9,400/- was made and payment through cheque of Rs. 2,20,640/- was made.
12. The above discussions reveal that goods have regularly been purchased from these concern, to whom payments are made through cheque. In none of the cases, the cheques have bounced and thus it is not clear as to why a regular supplier of the appellant will insist on cash payment and will threaten for non supply of goods in case payment by way of cash is not made. It may not be out of place to be mentioned here that in the case of Jai Bhole Shankar, payment of Rs. 4,02,504/- and in case of Commander Industries Pvt Ltd, payment of Rs. 4,34,147/- is outstanding at the close of F.Y. The appellant has not brought anything on record to substantiate its claim that payment in cash has been made on the insistence of the supplier. The bills of purchases and cash book have not been produced for verification, thus the genuineness of the same is not beyond doubt.



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14. Since the appellant has not been able to prove that the cash payment in violation to provision of section 40A(3) has been made on the insistence of the sellers, the disallowance made by the A.O. for cash payment exceeding Rs. 20,000/- in a day is liable to be sustained. Accordingly, the addition of Rs. 4,38,737/- made by the A.O. is sustained and these grounds of appeals are dismissed.

15. The Ground No. 8 to 10 are as under:-

8. BECAUSE the ITO has erred in law and on facts in making adhoc disallowances out of various heads of expenditure as claimed in the Profit and Loss Account, as per particulars given below:-

Sl No.	Head of Expenses	Amount Disallowed
1.	Telephone Charges	3,652
2.	Staff Welfare	2,452
3.	Deepawali Pujan Exp	1,403
4.	Shop Expenses	8,875
	Total	

On the ground that "the payments of following expenses has been made mostly in cash and vouchers of these expenses were partly self made and without any supporting.....Further personal use of telephone cannot be denied."

a) the appellant had maintained books of account and other related records on day-to-day basis, which were subjected to Tax audit under section 44AB of the Income tax Act 1961;

b) in the related audit reports there were no qualifications raised and this remains the status even at the assessment stage where books of account and other records has been placed before the ITO and no defect or discrepancy was noted therein; and

c) after such examination and perusal of books of account and all the records subsidiary as had been produced before the ITO, the net profit disclosed by the appellant stood accepted through specific findings given by the ITO;

there was no scope whatsoever for the adhoc disallowances as had been made by the

ITO as also the manner in which the above referred disallowances have been made.

10. BECAUSE, without prejudice the aforesaid grounds no. 8 & 9 above, the adhoc disallowance @ 1.5% of the expenditure claimed is much too high and excessive.

16. It is seen from the order of the A.O. has made disallowances on ad-hoc basis under the various heads Telephone Charges of Rs. 3,652/-, Staff Welfare of Rs. 2,452/-, Deepawali Pujan Expenses of Rs. 1,403/- and Shop Expenses of Rs. 1,368/-, the total disallowance under these heads of Rs. 8,875/- as in the opinion of the A.O. that some of the expenses were not fully verifiable.

17. During the course of appellate proceedings, the Id. Counsel attended and filed written submissions. It was submitted that the A.O. made these disallowances purely on adhoc basis without pointing out any defects in the books of accounts or the vouchers. Even after recording that books of accounts alongwith bills and vouchers were produced not even a single specific instance of any discrepancy or vouchers is brought to records by the A.O. In view of the decision in the case of M/s Chandra Confectionary P. Ltd. reported in 2003(2) MTC 1022, wherein it has been held by the Hon'ble I.T.A.T. Bench, Lucknow that such ad-hoc disallowances, without assigning any reasons and without pointing out any defect, are unjustifiable. **In view of above factual position, the addition of Rs. 8,875/- is hereby deleted.**

10. Thus it is clear that the assessee has been dealing regularly with these two suppliers and the other payments were made through cheques therefore, the claim of the assessee is that the cash payment was made due to exigency or business expediency is not supported by any material rather the claim of the

assessee is contrary to the facts and record which shows that the assessee is making regular payments through cheques to these parties as well as other purchases made from the parties. Therefore, once the assessee failed to bring anything on record to show that the payment in cash was made due to business exigency or expediency, the case law relied upon by the assessee would not help the assessee. Hence, I do not find any error or illegality in the order of the CIT(A) qua.

10. In the result, the appeal of the assessee is dismissed.

Order was pronounced in the open court after a conclusion of hearing on 21.03.2022. The written order is signed on the date as given below.

Sd/-
[VIJAY PAL RAO]
JUDICIAL MEMBER

DATED: 21/04/2022
Varanasi
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Copy forwarded to:

1. Appellant-
2. Respondent-
3. CIT(A), Varanasi
4. CIT
5. DR

By order
Sr. P.S.