

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'D' BENCH, CHENNAI**

श्री जी मंजूनाथा, लेखा सदस्य के समक्ष, श्री अनिकेश बनर्जी, न्यायिक सदस्य एवं  
**BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER AND  
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A No.:257/Chny/2017  
निर्धारण वर्ष /Assessment Year: 2013 - 2014

M/s. Gurudev Apparels,  
No.34, SIDCO Industrial Estate,  
Tekma Nagar,  
Pongupalayam,  
Tirupur - 641 666.

**PAN : AAFFG 3763K**

(अपीलार्थी/Appellant)

The Deputy Commissioner of  
Income Tax,  
Vs. Circle - 1,  
Tirupur

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Mr. S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Mr. G. Johnson, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 26.05.2022

घोषणा की तारीख/Date of Pronouncement

: 27.05.2022

**आदेश /ORDER**

**PER ANIKESH BANERJEE, JM:**

The instant appeal was filed by the assessee against the order of the Id. Commissioner of Income Tax Appeal- 3, Coimbatore (in brevity "CIT(A)") bearing Income Tax Appeal No. 400/15-16, dated 05.08.2016 passed under section 250(6) of the Income Tax Act, 1961 (in brevity "the Act"), for assessment year 2013-2014. The said appeal was generated from the order of the learned Deputy Commissioner of Income Tax, Circle-1, Tirupur (in brevity

“the AO”) passed under Section 143(3) of the Act, order dated 25.01.2016.

2. The grounds of the appeal is reproduced as under:-

- 1) The order of The Commissioner of Income Tax (Appeals) 3, Coimbatore dated 05.08.2016 in I.T.A.No.400/2015-16 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.
- 2) The CIT (Appeals) erred in sustaining the disallowance of Rs.49,25,000I- on the application of section 40A(3) of the Act and consequently erred in sustaining the addition of such sum in the computation of taxable total income without assigning proper reasons and justification.
- 3) The CIT (Appeals) failed to appreciate that the provisions of section 40A(3) of the Act had no application to the facts of the case and ought to have appreciated that the exceptions carved out as per proviso below section 40A(3A) of the Act would vitiate the findings in the impugned order.
- 4) The CIT (Appeals) failed to appreciate that the commercial expediency coupled with business compulsions should be taken note of and ought to have appreciated that the exceptions statutorily reckoned would vitiate the sustenance of the addition made in the computation of taxable total income.
- 5) The CIT (Appeals) went wrong in recording the findings in this regard in from paras 4.0 to 4.6 of the impugned order without assigning proper reasons and justification.

- 6) The CIT (Appeals) failed to appreciate that the rejection of the plea for admission of additional evidence in this regard was wrong, erroneous, unjustified, incorrect and not sustainable in law.
- 7) The CIT (Appeals) erred in sustaining the disallowance of Rs.46,49,05 for want of TDS u/s 194C of the Act on the application of section 40(a)(ia) of the Act and consequently erred in sustaining the addition of such sum in the computation of taxable total income without assigning proper reasons and justification.
- 8) The CIT (Appeals) failed to appreciate that the provisions of section 194C of the Act had no application to the facts of the case and further ought to have appreciated that the mechanical application of the provisions of section 40(a)(ia) of the Act for the sums paid as well as in overlooking the provisions inserted therein to make the said addition was wrong, erroneous, unjustified, incorrect and not sustainable in law.
- 9) The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles of natural justice would be nullity in law.

3. Brief facts of the case is that the additions were made for violation section 40(a)(ia) of the Act and section 40A(3) of the Act. Amount to Rs.49,25,000/- was added back for payment of cash related business expenses excess of prescribed limit in relation to the sister concerns of the assessee for violation of section 40A(3) of the Act. An amount of Rs.46,49,053/- was added back for violation

of section 40(a)(ia) of the Act for non-deduction of TDS under provisions 194C of the Act. Aggrieved assessee filed an appeal before the learned CIT(A). The learned CIT(A) upheld the order of the learned AO. Being aggrieved Assessee filed an appeal before us.

4. During the hearing before the ITAT the learned counsel of the assessee filed paper book on dated 04.11.19 which is kept in the record. Considering the grounds wise discussion Ground-1 & 9 are general in nature. Rest of the grounds are adjudicated as below.

5. First we are adjudicating the issue related 40A(3) of the Act, related to cash payment of business expenditure above prescribed limit which is total amount of Rs.49,25,000/-. The learned counsel mentioned that the amount is not paid a single party. The amount was paid to the different parties who are sister concern of the assessee related to labour payments. In relation to disallowance U/s 40A(3) of the Act, the observation of the learned CIT(A) in the order, paragraph no.3 is reproduced as below:-

*3.0 The first ground is against the disallowance of Rs.49,25,000/- by the Assessing officer invoking provisions of section 40A (3) of income Tax Act, 1961 for expenditure incurred in excess of Rs.20000/- in a day by each. The details of disallowance are as under:*

<b>Particulars</b>	<b>Amount Rs.</b>
<i>Daffodil clothing, Tirupur (sister concern)</i>	<i>7,50,000.00</i>
<i>Gurudev Spinners, Tirupur (sister)</i>	<i>10,00,000.00</i>

concern)	
Suthiv Garments, (sister concern)	12,00,000.00
Mano Style, Tirupur (sister concern)	19,75,000.00
<b>TOTAL</b>	<b>49,25,000.00</b>

3.1 The Assessing Officer has stated in the assessment order under while giving reason for making disallowance U/s 40 A (3)

On perusal of the cash book submitted by the assessee during the assessment proceedings, it was found that the assessee had made payments to various parties in cash amounting to Rs.49,25,000/- in contraventions to the provision of sec.40A(3) of the Income Tax Act.

The assessee was asked to explain why the cash payments should not be disallowed. The assessee could not however put on record any exceptional and unavoidable circumstances for making each payment nor could prove any exception as provide under rule 60D of the Income Tax Rules, 1962. Hence, the assessee agreed for the disallowance of Rs.49,25,000/- u/s 40A(3) and is added back to the total income of the assessee.”

4.0 It is clear from the above that the reason for making disallowance u/s 40A (3) is that the assessee could not put on record any exceptional and unavoidable circumstances for making such payments nor could prove any exceptional circumstances as provided under Rule 6DD of the Income Tax Rules 1962.

4.1 The additional evidence furnished by the appellant during the course of appellate proceedings letters from the recipients of the payments that cash was paid at their insistence. The contents of one such letter is reproduced below:

“We hereby certify that we had supplied cloth to MIs. Gurudev Apparels, (our sister concern) from Feb 2013 as below:

<b>Date of supply</b>	<b>Amount Rs.</b>
<b>05.02.2013</b>	<b>10,39,870</b>
<b>07.02.2013</b>	<b>9,60,260</b>
<b>01.03.2013</b>	<b>4,95,000</b>
<b>02.03.2013</b>	<b>4,95,000</b>
<b>04.03.2013</b>	<b>2,97,000</b>

Against the above amount due to us we asked for cash of Rs. 2, 00,000/- on I 1.03.2013 and Rs.2, 00,000/- on 30.03.2013 to meet our bUsiness needs and the same were paid to us.”

4.2 The exceptional situation provided in cIPuses (a) to (I) of Rule 6DD of Income Tax Rules, 1963 is to mitigate the rigours of

Section 40A (3) of the Income Tax Act, 1961.. The appellant has not given any evidence to show that the payments fall under the exceptional situations mentioned in clauses (a) to (I) Rule 6DD of Income Tax Rules, 1962. The additional evidence produced during appellate proceedings is not something which can help the Assessing officer to offer different view. The stand of the Assessing Officer that no exceptional or unavoidable circumstances have been put on record would exist at present also, unless the appellant substantiates that the payments fall in the circumstances mentioned in clauses (a) to (I) of Rule 6DD of Income Tax Rules, 1962. The mere statement from the recipients that the payment was made in cash at their insistence does not make these fall under the circumstances mentioned in clauses (a) to (I) of Rule 6DD which mitigates the rigour of section 40 A (3). The language of section 40 A(3) is clear and unambiguous and reveals the legislative intent explicitly as has been held in *Income Tax Officer vs Kenaram Saha & Subhash Saha* (116 ITD I (Kol Trib/SB), the relevant portion of which is reproduced below:

*From a plain reading of the section itself, it is evident that it would be applicable where the assessee incurs any expenditure exceeding Rs 20000 otherwise than by a cross cheque or crossed bank draft. In such circumstances, 20 per cent, of such expenditure shall be disallowed. In our opinion there is no ambiguity in the language of section 40A (3) and 'here fore, relying upon the above referred decision of the hon'ble apex court in the cases of Tam Agencies (2007) 292 ITR 444 and Anjum M. H. Ghaszvala, we hold that the section is to be interpreted by giving literal meaning to the language used in the section itself.*

*In view of the above, there is no need to look elsewhere for the purpose behind the enactment of Section 40A (3) is not relevant. What is relevant is the enactment itself, i.e. Section 40A (3). The income tax authorities have to give effect to the section as enacted by parliament.*

4.4 One of the case laws cited by the appellant *Anupam Teleservices vs ITO* 366 ITR 1 22(Guj) is rendered under special circumstances when assessee's business could have been adversely affected. In that case, the assessee had an account in a co-operative Bank and the other party did not accept the cheques from the co-operative bank as it took longer time for clearing. Another case law *CIT VS Interseas* (233 CTR 0077)(Kerala) deals with a situation where the payment is covered by Rule 6DD (f) (iii) as it was payment for fish and fish products. None of these judgments is on identical facts and circumstance as that of the appellant, who only claims that the recipients insisted in cash payments. Such a situation is not covered by clauses (a) to (I) of Rule 6DD of Income Tax Rules, 1961.

*4.5 As held by the ITAT special bench, Kolkata in the above cited case 116 ITD1 when language of the statute is clean and unambiguous, it cannot be interpreted otherwise.*

*4.6 In the instant case, admission of new evidence and getting comments of the Assessing officer does not in any manner help to relook the issue, which has been correctly decided by the Assessing officer. The disallowance is confirmed.”*

5.1. The learned counsel argued that the amount was paid to the sister concern of the assessee and the account is the running business account for payment of labour charges to the parties. He accepted the amount is paid beyond the limit prescribed under section 40A(3) of the Act. But there is no explanation of exceptional circumstances under rule 6DD of the Rule related these payments. There is no exception in case of payment related to 6DD of the said rule.

5.2. The learned DR further argued that the payment is violation of section 40A(3) of the Act. In any case the payment should not be allowed for violation section 40A(3) of the Act. None of the payment is considered under exclusion provided as per rule 6DD of the Rule

5.3. Therefore, we are of the considered view that cash expenditure debited in profit & loss cannot come under the exclusion provided under Rule 6DD of the Rule. Therefore, we are of the considered view that there is no error in the findings recorded by the AO and affirmed by the ld.CIT(A) to make disallowance of expenses

u/s.40A(3) of the Act. Hence, we are inclined to uphold the findings of the CIT(A) and dismiss the appeal filed by the assessee.

5.4. In the result, the grounds Nos. 2 to 5 filed by the Assessee are dismissed.

6. Next, we are adjudicating the issue related section 40(a)(ia) of the Act. The learned counsel submitted a list of parties for non-deducting TDS under section 194C of the Act. The list is placed in the Annexure- A of said paper book. The said list is reproduced here as under:

<b>Sl. No</b>	<b>Name &amp; Address</b>	<b>Amount Paid</b>	<b>Remarks</b>
1)	Apparel World	79,490	Confirmation Obtained
2)	SDV International Logistics Limited	8,42,125	Confirmation Obtained
3)	TNT India Private Limited	10,24,722	Confirmation Obtained
4)	Toben Logistics P Limited	2,93,853	Confirmation Obtained
5)	Expo Freight Private Limited	3,05,610	Confirmation Obtained
6)	Safeline Logistics Private Ltd.,	84,810	Confirmation Obtained
7)	Magnum Knit Finishers	3,37,228	Confirmation & Form No.26A Obtained
8)	PKP Knit Finishers	1,15,499	Confirmation Obtained
9)	R.G. Cone Winding	1,32,654	Form No.26A Obtained
10)	Harshini Fabs	1,61,250	Confirmation & Form No.26A Obtained
11)	MKS Knits	80,454	Confirmation Obtained
12)	Ero Designers	79,170	Confirmation Obtained
13)	Sivasakthi Stone Works	1,03,251	Confirmation Obtained
14)	Glitterss	84,021	Confirmation Obtained
15)	DSV Air & Sea Private Ltd.,	2,99,426	In the process of obtaining confirmation
16)	Kuehnel + Negal Private Ltd.,	1,02,760	In the process of obtaining confirmation
17)	Cargo Partner Logistics India Private Limited	77,601	In the process of obtaining confirmation
18)	Fashion Gate	1,61,038	In the process of obtaining confirmation
19)	Sri Sowbarnika Tex	98,191	In the process of obtaining confirmation

20)	J.N. Button Zip Dyeing	82,355	In the process of obtaining confirmation
21)	Ajantha Knit Mill	78,646	In the process of obtaining confirmation
22)	Reliance Capital	24,900	In the process of obtaining confirmation
<b>Total disallowance u/s.40(a)(ia) of the Act</b>		<b>Rs.46,49,054</b>	

6.1. The learned counsel of the assessee mentioned that the above mentioned parties had filed their confirmations as proof that said payments are declared as income in their ITRs in same assessment year. The assessee did not deduct the tax by violating TDS provision. But the said parties declared these payments as income in their return of income. In this respect the certificates with form number 26A under Rule 31ACB of the Income Tax Rule, 1962 (in brevity the Rule). He further mentioned that the confirmations from some of the parties are still pending which are under process. The learned counsel further confirmed that the said certificates are not produced before the ld AO. But all re produced before the the ld CIT(A). The ld CIT(A) did not take cognizance the documents during disposal of appeal.

6.2. The learned DR argued the point related non deduction of TDS. He mentioned that some of the certificates are not under specification of Rule 31ACB. He also agreed that matter may be returned back for further verification.

6.3. We heard the rival submission and considered the documents available on records. It is fact that the assessee violated section 194C read with the section 40(a)(ia) of the Act. But the certificates are filed under rule 31ACB of the Rule. With the consent of the Ld. DR and the Id Council we are sending back the issue before the Learned AO with a direction to verify the documents issued by the parties in relation to their declaration of income in the return. The assessee, in turn, is directed to substantiate its case. Needless to add that adequate opportunity of hearing shall be granted to the assessee

6.4. Hence , Ground Nos.6 to 9 are allowed for statistical purpose.

7. In the result, the appeal of the Assessee in I.T.A No.:257/Chny/2017 is partly allowed.

Order pronounced in the court on 27<sup>th</sup> May, 2022 at Chennai.

**Sd/-**

(जी मंजूनाथा)

**(G. MANJUNATHA)**

लेखा सदस्य /ACCOUNTANT MEMBER

**Sd/-**

(अनिकेश बनर्जी)

**(ANIKESH BANERJEE)**

न्यायिक सदस्य एवं / JUDICIAL MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 27<sup>th</sup> May, 2022

IA, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/**Copy to:** 1. अपीलार्थी/Appellant  
2. प्रत्यर्थी/Respondent  
3. आयकर आयुक्त (अपील)/CIT(A)  
4. आयकर आयुक्त/CIT  
5. विभागीय प्रतिनिधि/DR  
6. गार्ड फाईल/GF