

आयकर अपीलीय अधिकरण “एक सदस्य मामला” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, PUNE

श्री एस.एस. विश्वनेत्र रवि, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.364/PUN/2022
निर्धारण वर्ष / Assessment Year : 2011-12

Shri Shivaji Bhimaji Gaikwad,
Flat No. 12, Bhavdeep Society,
Shrirang Nagar, Gangapur Road,
Nashik – 422005

PAN : AGEPG3081F

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward – 1(2), Nashik

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sanket Joshi
Revenue by : Shri M.G. Jasnani

सुनवाई की तारीख / Date of Hearing : 22-08-2022
घोषणा की तारीख / Date of Pronouncement : 30-08-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 02-03-2021 passed by the National Faceless Appeal Centre, Delhi (‘NFAC’) for assessment year 2011-12.

2. I find that this appeal was filed with a delay of 17 days and it is covered by the decision of Hon’ble Supreme Court in Miscellaneous

Application No. 21 of 2022 in SMW(C) No. 3 of 2021 vide its order dated 10-01-2022. Accordingly, the delay of 17 days is condoned.

3. The ld. AR submits that the assessee is not interested to prosecute ground No. 1 and prayed to dismiss the same. Hence, ground No. 1 is dismissed as not pressed.

4. Ground No. 2 raised by the assessee challenging the action of CIT(A) in confirming the disallowance u/s. 40A(3) of the Act without appreciating the business expediency in payment of cash towards genuine transaction in the facts and circumstances of the case.

5. Brief facts relating to the issue on hand are that the assessee is an individual and derives income from land deals and construction. The assessee filed return of income declaring a total income of Rs.1,45,240/- and agricultural income at Rs.80,700/-. Under scrutiny notices u/s. 143(2) and 142(1) of the Act were issued. In response to the said notices, the assessee participated in the assessment proceedings. During the course of such assessment proceedings, the AO found that the assessee purchased a land for a total consideration of Rs.20,00,000/- and paid Rs.15,00,000/- in cash. The AO invoked the provisions u/s. 40A(3) of the Act and requested the assessee to explain as to why an amount of Rs.15,00,000/- should not be disallowed for violation of payment of consideration in cash beyond the prescribed limit of Rs.20,000/- vide show cause notice. The explanation given by the assessee was reproduced by the AO and the assessee placed reliance on the decision of Hon'ble Supreme Court in the case of Attar Singh Gurmukh Singh Vs. ITO reported in (1991) 191 ITR 667 (SC). The AO found that the submissions of assessee is not acceptable and added an amount of Rs.15,00,000/- to the

total income of the assessee on account of violation of provisions u/s. 40A(3) of the Act vide its order dated 27-12-2018 passed u/s. 143(3) of the Act. The CIT(A), NFAC, Delhi confirmed the view of AO in disallowing Rs.15,00,000/- u/s. 40A(3) of the Act. Aggrieved by the same, the assessee is before me.

6. The ld. AR, Shri Sanket Joshi submits that the disallowance as confirmed by the CIT(A) is not maintainable as the assessee paid the said amount to the sellers on their demand and the sellers confirmed the same before the AO and also identified. The said payment was part of sale consideration relating to the purchasing of land in S. No. 2526/2B which was admitted before the registering authority, Government of Maharashtra. He argued that it is a genuine transaction, the assessee paid the said amount on the demand of the sellers having no option. He submits that the cash payment was incorporated in the purchase deed which is in the knowledge of AO. The AO examined the transaction in every detail and found no discrepancy in identifying the sellers and their confirmation. He argued that the payment is made in cash involving genuine transaction the disallowance u/s. 40A(3) is not justified. He referred to para No. 4.3 of the assessment order and submits that the assessee purchased ancestral property belong to Magare brother and having no faith amongst Magare brothers they demanded to settle the sale consideration in cash. The AO did not consider the said submission in terms of the judgment of Hon'ble Supreme Court in the case of Attar Singh Gurmukh Singh (supra) and proceeded to add the said amount by holding the explanation of assessee is not covered by exceptions contained in Rule 6DD of the Rules. The ld. AR referred to order of this Tribunal in the case of ITO Vs. M/s. Dhanshree Ispat in ITA No. 794/PUN/2013 for A.Y. 2009-10 vide order dated 31-05-2017 and drew our attention to para No. 5 of the said order and argued

that this Tribunal while placing reliance on the decision of Hon'ble Supreme Court in the case of Attar Singh Gurmukh Singh (supra), Hon'ble High Court of Rajasthan in the case of Smt. Harshila Chordiya Vs. ITO reported in 298 ITR 349 (Raj.) and Hon'ble High Court of Punjab and Haryana in the case of Gurdas Garg Vs. CIT reported in 63 taxmann.com 298 (P & H) held no disallowance u/s. 40A(3) of the Act is warranted if the cash payments are made under bonafide conditions when no doubt is raised over genuineness of payments and when the payees are identifiable. Further, he drew our attention to the order of this Tribunal in the case of Dnyaneshwar Jagannath Dhamne Vs. ITO in ITA No. 202/PN/2016 for A.Y. 2009-10 vide order dated 08-07-2016 and argued that this Tribunal held the provisions u/s. 40A(3) of the Act are not attracted if the cash payment is part and parcel of total sale consideration paid before Sub-Registrar of the State Government office. Further, he referred to the decision of Hon'ble High Court of Calcutta in the case of Principal Commissioner of Income Tax Vs. Standard Leather (P) Ltd. reported in (2022) 6 NYPCTR 92 (Cal) and drew our attention to para No. 4 of the said decision and argued that the Hon'ble High Court of Calcutta by placing reliance on the decision of Hon'ble Supreme Court in the case of Attar Singh Gurmukh Singh (supra) held that Rule 6DD of the Rules are intended to regulate business transaction and it has been laid down that it is always open to the assessee to furnish documents to prove that the payment in the manner prescribed u/s. 40A(3) of the Act was not practicable or would have caused genuine difficulty to the payee.

7. The ld. DR, Shri M.G. Jasnani placed on record the decision of Hon'ble High Court of Bombay in the case of Madhav Govind Dhulshete Vs. ITO in Income Tax Appeal (L) No. 2128 of 2018 vide order dated 08-10-2018. He submits that the Hon'ble High Court of Bombay dismissed the

appeal of assessee confirming the disallowance made u/s. 40A(3) of the Act. He argued the ratio laid down by the Hon'ble High Court of Bombay is applicable to the facts and circumstances of the present case and supported the order of CIT(A).

8. Heard both the parties and perused the material available on record. I note that the assessee placed reliance on the decision of Hon'ble Supreme Court in the case of Attar Singh Gurmukh Singh (supra) before the AO and the order of this Tribunal in the case of Dnyaneshwar Jagannath Dhamne (supra) before the CIT(A). The AO held the exceptions under rule 6DD are not covered in favour of the assessee and the CIT(A) held the facts and circumstances of the case of Dnyaneshwar Jagannath Dhamne (supra) are entirely different from the assessee's case. The Hon'ble Supreme Court in the case of Attar Singh Gurmukh Singh (supra) held that the provisions u/s. 40A(3) of the Act must not be read in isolation or to the exclusion of Rule 6DD. Further, it was observed that the provisions u/s. 40A(3) of the Act are not intended to restrict the business activities. It is insisted only to enable the AO to ascertain whether the cash payments made are out of the income from disclosed sources. Further, it is held the terms of section 40A(3) of the Act are not absolute. I find the collective reading of provisions u/s. 40A(3) of the Act along with Rule 6DD of the Rules provides where an assessee can be exempted from the requirement of payment by a crossed cheque or bank draft in the circumstances specified under which the assessee is unable or not practicable causing genuine difficulty. I find, explanation in response to show cause issued by the AO, that it was explained by the assessee that due to disputes between Magare brothers, the sellers, decided to sell their capital asset and demanded the settlement of purchase consideration in cash having no faith amongst them. Due to which such unavoidable circumstances the assessee paid the said amount

in cash to the Magare brothers. I note that the said explanation was reproduced by the AO in his order at page 2 and on perusal of the same, I note that the payment in cash was part of sale consideration which is incorporated in the purchase deed. The ld. AR placed on record a copy of purchase deed in Marathi before this Tribunal.

9. This Tribunal in the case of ITO Vs. M/s. Dhanshree Ispat (supra) by following the decision of Hon'ble Supreme Court in the case of Attar Singh Gurmukh Singh (supra) deleted the addition made u/s. 40A(3) of the Act vide para 7 of the said order by holding when the transaction is genuine no disallowance is warranted. In the present case also the cash payment forming part of sale consideration was incorporated in the purchase deed and a contention was made before the AO that on the demand of the sellers having no faith amongst them cash payment to the tune of Rs.15,00,000/- was paid. Admittedly, the said sellers were identified and confirmed receipt of cash payment before the Registering authority. It is also noted that the AO did not dispute the same. Therefore, in our opinion, the finding of this Tribunal in the case of M/s. Dhanshree Ispat (supra) is applicable to the facts on hand when the transaction is genuine no disallowance could be made u/s. 40A(3) of the Act.

10. Further, this Tribunal in the case of Dnyaneshwar Jagannath Dhamne (supra) which was placed on record before the CIT(A) and the CIT(A) held the facts in the said case are entirely different from the facts in hand, in our opinion, is incorrect for the reason, the Tribunal in para 11 at page 7 of the said order clearly held the cash payment of Rs.3 lakhs were part and parcel of total sale consideration which was admitted before the Government authority i.e. Sub-Registrar of State of Maharashtra. The Tribunal held the disallowance u/s. 40A(3) of the Act is not maintainable if

the cash payment is part and parcel of total sale consideration. In the present case also the cash payment was part and parcel of total sale consideration which is not disputed by both the lower authorities. Therefore, the finding of this Tribunal in the case of Dnyaneshwar Jagannath Dhamne (supra) is applicable.

11. Further, to the decision of Hon'ble High Court of Bombay in the case of Madhav Govind Dhulshete (supra) the contention of ld. AR is that the Hon'ble High Court of Bombay did not observe that Rule 6DD is not exhaustive. On perusal of the relevant para 9 of the said decision, I note the Hon'ble High Court of Bombay was pleased to observe that Rule 6DD of Rules enables the assessee to urge that the exceptional or unavoidable circumstances led to payment made in cash. Therefore, I find force in the arguments of ld. AR that Rule 6DD is exhaustive and it is open to the assessee the exceptional and unavoidable circumstances which made the assessee to make payment in cash. As already discussed above, the contention of the assessee from the day one is that the sellers demanded the assessee to pay in cash which is part and parcel of total sale consideration. Further, there is no dispute with regard to identification of the sellers as well as their confirmations in respect of payment in cash from the assessee. It is also not disputed that the said cash payment is part and parcel of total sale consideration which is reflected in the purchase deed. Further, the sellers also admitted the payment of cash before the registering authority under due process. The contention of ld. AR is that the payment vide cheque or draft is not at all practicable due to circumstances on demand of settlement of purchase consideration in cash from the sellers of the property. Therefore, the ratio laid down by the Hon'ble Supreme Court in the case of Attar Singh Gurmukh Singh (supra) is applicable and the disallowance as confirmed by the CIT(A) in the hands

of assessee on account of section 40A(3) of the Act is deleted. Thus, ground No. 2 raised by the assessee is allowed.

12. In view of my decision in ground No. 2, the issue raised in ground No. 3 becomes infrustuous requiring no adjudication.

13. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 30th August, 2022.

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 30th August, 2022.
रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), NFAC, Delhi.
4. The CIT concerned.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक सदस्य मामला" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune