

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T. A. No. 107/Asr/2022**  
Assessment Year: 2018-19

The Azad Nakodar Bus  
Service (P) Ltd., Bus Stand,  
Nakodar.

[PAN: AADCA 8627K]

**(Appellant)**

**V.** Deputy Commissioner of  
Income Tax, CPC, Bengaluru

**(Respondent)**

Appellant by           None (Written submission)

Respondent by       Sh. Rajiv Wadhwa, Sr. D.R.

Date of Hearing       : 07.02.2023  
Date of Pronouncement : 20.02.2023

**ORDER**

**Per Dr. M. L. Meena, AM:**

The present appeal has been filed by the assessee against the order of the Ld. CIT(A) National Faceless Appeal Centre (NFAC), Delhi dated 21.03.2022 in respect of Assessment Year 2018-19.

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

- “1. *The appellate order is perverse, unlawful, arbitrary, without appreciation of the facts of the case and the Law.*
2. *The Ld. CIT(A) erred to confirm addition of Rs.4374133/- made by A.O., ignoring the submissions of the assessee that the cash payments made to Government are covered under rule 6DD(b) under section 40A(3) of the Act. The addition of Rs.4374133/- is prayed to be cancelled.*
3. *The appellant craves leave to amend any ground(s) or add any new ground(s) before the appeal is finally disposed off.”*

3. The brief facts of the case are that the assessee is a passenger transport company, engaged in plying buses on different routes. The assessee has been depositing govt. Taxes, special road taxes, PF and ESI with the govt. of Punjab every month. Assessee submitted before the AO That the taxes are to be deposited on line in the Govt. SBI bank a/c which the assessee is not having/maintaining and Company has been using the services of Shashi Bhushan & co who first take the cash amount from the assessee and then deposit it in its bank a/c to transfer in the bank a/c of govt. of Punjab on behalf of assessee Company. Accordingly, it was submitted that the payments are covered under rule 6DD(b). The AO was not satisfied and made addition by observing that there is no such condition in Rule 6DD(b) that the cash payment for Govt taxes be made to some other person, who in turn will make payment to the Government account.

4. In appeal, the Id. CIT(A) has confirmed the finding of the AO by observing as under:

*“Having examined the facts and the submissions of the appellant, I am of the considered view that the payments do not fall under the circumstance mentioned in Rule 6DD(b) since these payments were not made to the Government but to Harjinder Singh and Shashi Bhusan & Co. There is no such condition in Rule 6DD(b) that the cash payment for Govt taxes be made to some other person, who in turn will make payment to the Government. Rule clearly mentions **“where the payment is made to the Government and, under the rules framed by it, such payment is required to be made in legal tender”**. Therefore, the contention of the appellant that these payments comes under Rule 6DD(b) and the provisions of section 40A(3) are not applicable cannot be accepted. Therefore, ground no. 2 is dismissed.”*

5. The assessee has filed a written submission contending therein that the AO and the Id. CIT(A) has ignored the submissions of the assessee that the cash payment made to the Government are covered Rule 6DD(b) u/s 40A(3) of the Act. The relevant part of the written submission reads as under:

*As already explained in previous para that assessee used to pay govt, taxes online through an agent Shashi Bhushan & Co. As it was not having any online bank account in the name of the company. The payments are clearly covered under rule 6DD(b) of the act which states. “Where the payment is made to the government and the rules framed by it no disallowance shall be made. The auditor in its report in form 3CA/3CD has clearly mentioned that the cash payments are made for payment of Govt. Taxes (Copy of report already filed along with Form 36) Since the payment is covered under Rule 6 DD (b) of u/s Act, it is prayed that the disallowance u/s 40(3) of the act amounting to Rs.4374133/- may please along with demand be deleted. Even no cash payment*

is given to agent Shashi Bhushan & Co. It was first deposited in his bank account from there he use to remit the Govt. Taxes. PF and ESI

**The provisions of section 40A(3) read as below-**

**Expenses or payments not deductible in certain circumstances.**

40A. (1) The provisions of this section shall have **effect** notwithstanding anything to the contrary contained in **any other** provision of this Act relating to the computation of income **under the head** "Profits and gains of business or profession".

**Where the assessee incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, or use of electronic clearing system through a bank account [or through such other electronic mode as may be prescribed], exceeds ten thousand rupees, no deduction shall be allowed in respect of such expenditure.**

**The provisions of Rule 6DD(b) are as below -**

**[Cases and circumstances in which a payment or aggregate of payments**

**exceeding ten thousand rupees may be made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as prescribed in rule 6DD.]**

6DD. No disallowance under sub-section (3) of section 40A shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-section (3A) of section 40A where a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account [account payee bank draft or use of electronic clearing system through a bank account or through such, other electronic mode as prescribed under rule 6ABBA, exceeds ten thousand rupees]

**where the payment is made to the Government and, under the rules framed by it, such payment is required to be made in legal tender.**

The Id. CIT(A) in his order page 9 has further observed as under:

*It is seen from the above that the Audit Report u/s 44-AB in Form 3CD has reported the above details Of disallowance/deemed income under section 40A(3). The appellant further contended that as the taxes are to be deposited online in the Govt. SB1 bank a/c which the appellant is not having/maintaining, it has been using the services of Shashi Bhushan & Co, who first take the cash amount from the assessee and then deposit it in its bank a/c for transfer in the bank a/c of Govt, of Punjab on behalf of the appellant.*

*Having examined the facts and the submissions of the appellant, I am of the considered view that the payments do not fall under the circumstance mentioned in Rule 6DD(b) since these payments were not made to the Government but to Harjinder Singh and Shashi Bhusan & Co. There is no such condition in Rule 6DD(b) that the cash payment for Govt taxes be made to some other person, who in turn will **make** payment to the Government. Rule clearly mentions “**where the payment** is made to the Government and, **under the rules framed by it, such** payment is required to be **made in legal tender**”. Therefore, the contention of the appellant that these payments comes under Rule 6DD(b) and the provisions of section 40A(3) are not applicable cannot be accepted. Therefore, ground No 2 is dismissed.*

6. None attended for the appellant, however a written submission was filed with a request to decide the appeal considering its written submission. Relevant part reads as under:

*Ld. CIT(A) has failed to understand the motive behind the introduction of section 40A(3) by the Govt, consideration of business expediency and other relevant factors have been ignored here.*

*Even the CA who conducted the Tax Audit has mentioned in his **report** that cash is deposited in the bank account of agents Shashi Bhushan & Co and Harjinder Singh first then they transfer the same **to** the credit of Govt, account for payment of Govt, taxes and PF, ESI.*

*It is pertained to mentioned here that the object of introduction **of section 40A(3)** by the Finance Act was that no recipient of cash **should be***

escaped and his identity, should be untraced due to cash payment. **In the assessee case the end user, the beneficial is Govt. Moreover these payments are for meeting statutory requirements to be completed for the benefit of smooth running of business. Out of total payment of Rs. 43,74,133/- Rs. 38,33,579, is deposited for State Road Tax (Certificate of Secretary Regional Transport Authority, Jalandhar is enclosed). Balance is Rs. 5,40,554 is paid for Share of Provident fund & ESI. As all these departments requires payment online and if there is delay of even one day, huge penalties like prohibition in plying of Buses may be imposed by the Authorities.**

*It is mentioned in section 40A(3) of the Act that no disallowance shall be made and no payment shall be deemed to be the profit & gains of business or profession under sub section (3) and this sub section where a payment or aggregate of payment made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft.*

*Exceeds ten thousand rupees in such cases and under such circumstances as may be prescribed “**having regards to the nature and extend of banking facilities available consideration of business expediency and other relevant factors**”*

*As already stated that the assessee company being 72 years old, Mg. Director too illiterate and aged about 75 years (now deceased) were not well versed with online banking and not having knowledge of internet used the services of agent which most of the business men in India are doing by paying nominal charges. Here the end user is the Govt, through the payment is made through agents. The company has earned booking of Rs. 4 Crores during this assessment year 2018-19 only due to depositing these payments of special road tax, employees benefit PF & ESI in time by adopting these means of payment of Statutory dues, taxes.*

*There are so many Judgments in favour of assessee by Hon'ble Courts where the disallowances under section 40A(3) of the Act dismissed.*

*Where assessee directly deposited money in bank account of its agent no disallowance could be made under section 40A(3) in respect of said deposit CTF Vs Suit. Shelly paris (2013) 31 taxman.com 173/213 taxman 213(Mag) (P&H)*

*It is prayed that CIT(A) was not justified in confirming addition of Rs. 43,74,133/- under section 40A(3) without properly appreciating nature of the*

*transactions and scope and object of section 40A(3) of the Income Tax Act, 1961.*

*Disallowance under section 40A(3) could not be made as identity of persons from whom purchases had been made was established, source of cash payment was clearly identifiable and the said details were submitted before AO. K.K Constructions Co. Vs ACIT (ITAT, Jaipur) ITA990/JP/2017*

*In case of Gurdas Garg, Bhathinda Vs ACIT. In ITAT, Amritsar matter in favour of assessed. In Assessee's case cash payments were deposited in account of agent for remittance of Govt, dues for business exigency and thus no addition is called for. It is prayed order of CIT(A), NFAC may please be cancelled and additions of Rs. 43,74,133/- may please be deleted.*

7. Heard the Ld. DR at length, perused the written submission of the assessee and have gone through the material available on record. Admittedly, the AO has made an addition Rs. 43,74,133/- u/s 40A(3) of the Act, being not satisfied with the reply of the assessee, holding that there is no such condition in Rule 6DD(b) that the cash payment for Govt. taxes be made to some other person, who in turn will make payment to the Government account.

8. From the impugned order, it is seen that the Audit Report u/s 44-AB in Form 3CD has reported the above details of disallowance/deemed income under section 40A(3). The appellant contended before the CIT(A) that as the taxes are to be deposited online in the Govt. SB1 bank a/c which the appellant is not having/maintaining, and it has been using the

services of Shashi Bhushan & Co, who first take the cash amount from the assessee and then deposit it in its bank a/c for transfer in the bank a/c of Govt. of Punjab on behalf of the appellant. The Ld. CIT(A) having examined the facts and the submissions of the appellant, formed the considered view that the payments do not fall under the circumstance mentioned in Rule 6DD(b) since these payments were not made to the Government but to Harjinder Singh and Shashi Bhusan & Co. We find that there is no such condition in Rule 6DD(b) that the cash payment **for** Govt taxes be made to some other person, who in turn will **make** payment to the Government. Rule clearly mentions “**where the payment** is made to the Government and, **under the rules framed by it, such** payment is required to be **made in legal tender**”. Therefore, the contention of the appellant that these payments comes under Rule 6DD(b) and the provisions of section 40A(3) are not applicable, cannot be accepted. In our view, the Ld. CIT(A) has rightly confirmed the addition as per law while dismissing of the appellant before it. The citation quoted in the written submission by the appellant are distinguishable on peculiar fact of the present case.

9. We find no infirmity and perversity in the observation and finding of the Ld. CIT(A) to the facts on record in confirming addition of Rs.4374133/-

made by A.O., on account of the cash payments made to third party account, being claimed in turn payment to Government account under rule 6DD(b). Accordingly, the impugned order passed by the Ld. CIT(A) is upheld.

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

*Order pronounced in the open court on 20.02.2023*

**Sd/-**  
**(Anikesh Banerjee)**  
**Judicial Member**

**Sd/-**  
**(Dr. M. L. Meena)**  
**Accountant Member**

*\*GP/Sr./P.S.\**

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy  
By Order