

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

**आयकर अपील सं./ITA No.196/SRT/2023**

**निर्धारण वर्ष/Assessment Year: (2014-15)**

**(Physical Hearing)**

Murtuja Hussainbhai Hirani, Prop. of R. K. Bullion, Shop No.5, Pranav Chamber Madhumati, Navsari – 396445, Gujarat.	<b>Vs.</b>	The ITO, Ward-3, Navsari
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACIPH3680D</b>		

<b>Appellant by</b>	Shri Rasesh Shah, CA
<b>Respondent by</b>	Shri Vinod Kumar, Sr. DR
<b>Date of Hearing</b>	09/06/2023
<b>Date of Pronouncement</b>	26/06/2023

**आदेश / O R D E R**

**PER DR. A. L. SAINI, AM:**

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2014-15, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), [in short “the ld. CIT(A)”], National Faceless Appeal Centre (In short ‘the NFAC’), Delhi, in Appeal No. ITBA/NFAC/S/250/2022-23/1050794610(1), dated 15.03.2023, which in turn arises out of an assessment order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the ‘Act’), order dated 16.12.2016.

2. The grounds of appeal raised by the assessee are as follows:

*“1. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in making disallowance of Rs.2,04,86,216/- on account of cash purchases of gold bar u/s 40A(3).*

2. *On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in making addition of Rs.45,732/- by way of difference between the actual household expenditure debited to capital account by the assessee and as estimated by the assessing officer.*

3. *It is prayed that the assessment may please be quashed and/or addition made by the assessing officer may please be deleted.*

4. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”*

3. At the outset, Learned Counsel for the assessee informs the Bench that assessee does not wish to press ground no.2, therefore, we dismiss the ground no.2 as not pressed.

4. Now, we shall take ground no.1 raised by the assessee, which relates to disallowance of Rs.2,04,86,216/- on account of cash purchase of gold bar under section 40A(3) of the Act.

5. Succinct facts *qua* the issue are that assessee filed his return of income on 22-11-2014 vide E-filing Ack. No.415942541221114, declaring total income at Rs.3,76,026/- for the year under consideration. The said return of income, was processed u/s 143(1) of the Income Tax Act, accepting the income declared in the return of income. Later on, assessee's case was selected for complete scrutiny in CASS System of Scrutiny, and accordingly notice u/s 143(2) was issued on 03.09.2015 and duly served upon the assessee. Thereafter, notice u/s 142(1) of the Act along with detailed questionnaire was issued on 29.07.2016 and duly served upon the assessee. The assessee is doing a trading business in proprietary, name of M/s R. K. Bullion, from Shop No. 5, Ground floor, Pranav Chamber, Madhumati, Navsari and engaged in business of trading in Gold and Silver bar, coin and jewellery etc. During the scrutiny assessment, the assessing officer issued notice to the assessee to explain transactions in gold.

6. In response to above notices, the assessee, vide his submission dated 13.10.2016, furnished the details along with the cash book vide point no.1 of submission running from page 01 to page 155 of the paper book. On perusal of cash book, it was noticed by the assessing officer that assessee had made cash purchases on 29.08.2013 to 12.09.2013 and no narration of the entries were furnished in the cash book. Therefore, assessing officer again issued notice u/s 142(1) dated 13.10.2016, wherein the assessee was asked to furnish the details of cash sales and purchase parties details and bills vouchers etc. In response to second notice of the assessing officer, the assessee, vide his submission dated 24.10.2016, furnished the details called for and furnished purchase bills and submitted computer CD to the assessing officer. On verification of cash book and purchase bills of cash purchases, the assessing officer observed that purchase bills were not complete and in some purchase bills no name of purchase parties was mentioned. Then after, the assessing officer made summary of cash purchases to the tune of Rs. 2,04,86,216/-, which is mention on page no.7 of the assessment order. After considering the reply of the assessee, the assessing officer held that amount of Rs.2,04,86,216/- as per cash book and cash memo is in contravention of provisions of section 40A(3) of the Income Tax Act therefore assessing officer made addition of Rs.2,04,86,216/-.

7. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Ld. CIT(A), who has confirmed the action of the Assessing Officer therefore, the assessee is in further appeal before us.

8. Shri Rasesh Shah, Learned Counsel for the assessee, argued that first of all, the each purchase in cash is below Rs. 20,000/- hence there is no violation of provisions of section 40A(3) of the Act. The ld Counsel further argued that there is no fall in the gross profit as well as net profit for the

assessment year under consideration and in the subsequent year. In fact the net profit ratio is increasing, therefore it cannot be concluded that assessee's transactions relating to cash purchase below Rs.20,000/- is bogus. The Ld. Counsel further stated that assessee made an agreement for cash purchases of the gold from various customers, since the assessee is trading in gold items, therefore he made minor cash purchases, which is only 4% of the total purchases hence the amount of cash purchase is very insignificant. Besides, the assessee made purchases in the course of doing genuine business, therefore these small cash purchases, below Rs.20,000/-, should not be disallowed.

9. On the other hand, Learned Senior Departmental Representative (Ld. Sr. DR) for the Revenue submitted that section 40A(3) relates to disallowance of the expense, if the amount is paid in cash exceeding Rs.20,000/-. The exemption provided in Rule 6DD can be considered only and apart from this, if there is violation of the provision of section 40A(3) of the Act, then there should be disallowance. The provision of section 40A(3) of the Act was brought in the statute, to promote the transaction by way of cheque, through banking channel. Therefore, the arguments advanced by the Ld. Counsel for the assessee that the gross profit ratio of the assessee has increased and assessee has filed the figures of purchases in the VAT return does not carry any weight and therefore the addition made by the Assessing Officer should be sustained.

10. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. To understand the issue under consideration, in right perspective,

let us, first go through the provisions of section 40A(3) of the Act, which is reproduced below( to the extent useful for our analysis):

*“The Section 40A(3) reads as under :-*

*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”. (2)*

*(3) 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, exceeds twenty thousand rupees, no deduction shall be allowed in respect of such expenditure.*

*.....  
Provided that no disallowance shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-section (3) and this sub-section where a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheques drawn on a bank or account payee bank draft, exceeds twenty thousand rupees, in such cases and under such circumstances as may be prescribed, having regard to the nature and extent of banking facilities available, considerations of business expediency and other relevant factors:*

*Provide further that in the case of payment made for plying, hiring or leasing goods carriages, the provisions of sub-sections (3) and (3A) shall have effect as if for the words “twenty thousand rupees,” the words “thirty-five thousand rupees” had been substituted.”*

11. As per the 1<sup>st</sup> proviso, Rule 6DD has been prescribed, which details the circumstances in which no disallowance can be made. We note that assessee`s case under consideration relates to assessment year 2014-15, where purchase in cash to the extent of Rs.20,000/- is allowed. We have gone through the assessee`s paper book and noted that each cash payment against each cash purchase, does not exceed Rs.20,000/-. Therefore, we note that cash purchase is within the permissible limit prescribed under section 40A(3) of the Act, hence there is no violation of provisions of section 40A(3) of the Act. Hence, we are not inclined to accept the contention of the Assessing Officer in any manner and hence the addition

so made by the assessing officer under section 40A(3) of the Act should be deleted.

12. The Ld. Counsel also submitted the following details and documents before the Bench, which is reproduced below:

- (1) Tax audit report along with Audited Financial Statements and Trading account (vide Pb.24 to 45)
- (2) Acknowledgement of total income along with computation of total income (vide Pb.46 to 49)
- (3) VAT Annual return from 01.04.2023 to 31.03.2014 (vide Pb.50 to 54)
- (4) VAT Audit Report (vide Pb.55 to 64)
- (5) Notices u/s 143(2) issued by the assessing officer (vide Pb.65)
- (6) Letter filed before assessing officer, dated 05.10.2015 (vide Pb.66 to 67)
- (7) Notice u/s 142(1) issued by the assessing officer (vide Pb.68 to 69)
- (8) Letter filed before assessing officer, dated 02.09.2016 (vide Pb.70 to 72)
- (9) Letter filed before assessing officer (vide Pb.73 to 74)
- (10) Notice u/s 142(1) issued by the assessing officer (vide Pb.75 to 76)
- (11) Letter filed before assessing officer, dated 24.10.2016 (vide Pb.77 to 78)
- (12) Show cause notice issued by the assessing officer (vide Pb.79)
- (13) Summons issued u/s 131 by the assessing officer (vide Pb.80)
- (14) Letter filed before Assessing Officer in response to summons, dated 23.09.2019 (vide Pb.81)

- (15) Letter filed before assessing officer in response to summons, dated 14.10.2019 (vide Pb.82 to 83)
- (16) Letter filed before assessing officer in response to summons, dated 05.12.2019 (vide Pb.84 to 85)
- (17) Replies of the 12 purchase parties in response to the notice issued u/s 133(6) along with their ID proof (vide Pb.86 to 117)
- (18) Statement showing sales of gold bullion out of cash purchase of gold bullion (vide Pb.118)
- (19) Purchase register (Form 201B) (vide Pb.119 to 131)
- (20) Sales register (Form 201B) – from 01.08.2013 to 30.09.2013 (vide Pb.132 to 133)
- (21) URD purchase Bill Book -1 (vide Pb.134 to 242)
- (22) URD purchase Bill Book -2 (vide Pb.243 to 351)
- (23) Sample Sales Bills of Gold (vide Pb.352 to 361)
- (24) Ledger Account of Debtors (vide Pb.362 to 366)
- (25) Cash Purchase summary (vide Pb.367 to 435)
- (26) Cash book from 01.08.2013 to 30.09.2013 (vide Pb.436 to 444)
- (27) Bank statement from 01.08.2013 to 30.09.2013 (SBI A/c. No.00000032184982523) (vide Pb.445 to 447)
- (28) Bank statement from 01.08.2013 to 30.09.2013 (SBI A/c. No. 31546876022) (vide Pb.448 to 452)

13. With help of the above supporting documents and evidences, the Id Counsel argued that cash purchases of the assessee is only 4% of the total purchases and these purchases from each individual is below Rs.20,000/- which does not attract the provisions of section 40A(3) of the Act. Besides, the details submitted by the assessee, during the assessment proceedings

and as well as during the appellate proceedings, wherein neither Assessing Officer nor the Ld. CIT(A) has disputed this fact that cash payment does not exceed Rs.20,000/-. The assessee made the cash payment which is allowed as per the provision of section 40A(3) and this fact was not disputed by the Ld. CIT(A). Apart from this, the Ld. Counsel for the assessee submitted a chart showing gross profit ratio and net profit ratio of the assessee, which is reproduced below:

Before Income Tax Appellate Tribunal, Surat Bench  
In case of Murtuja Husainbhai Hirani  
Assessee's Appeal No. 196/SRT/2023 for A.Y. 2014-15  
Date of hearing. – 09.06.2023

Assessment Year	Total Turnover	Gross Profit	Gross Profit (%)	Net Profit	Net Profit(%)
2013-14	₹ 95,48,86,586	₹ 15,52,200	0.16%	₹ 3,33,760	0.03%
2014-15	₹ 51,68,65,026	₹ 12,75,398	0.25%	₹ 3,89,243	0.08%
2015-16	₹ 71,82,46,597	₹ 17,82,157	0.25%	₹ 7,66,000	0.11%

Thus, Ld. Counsel submits that there is no fall in the gross profit ratio as well as net profit ratio for the assessment year under consideration and the subsequent years, in fact the net profit ratio is increasing, therefore it cannot be concluded that assessee's transactions relating to cash purchase are bogus.

14. The Ld. Counsel further stated that assessee made an agreement for cash purchases of the gold from various customers, since the assessee is trading in gold, therefore he made cash purchases only up to 4% of the total purchases. During the assessment proceedings, Assessing Officer issued show cause notice, however the assessee could not submit the entire details and documents before the Assessing Officer. However, before the Ld. CIT(A), the assessee submitted additional evidences and these additional evidences were remitted back to the file of the Assessing Officer for his examination. The Ld. Counsel also submits that during the remand

proceedings, the Assessing Officer has issued summons to the 17 persons and out of 17 persons, 12 persons have replied to the Assessing Officer. The remand report of the assessee is placed at paper book page no.9 wherein in most of the cases, the Assessing Officer gave the findings in favour of the assessee. Besides, the assessee has filed the VAT return showing the purchases of gold for AY.2014-15, therefore genuineness of the purchases cannot be doubted.

15. The Ld. Counsel also submitted that books of accounts of the assessee are correct as the assessment was framed u/s 143(3) of the Income Tax Act, 1961, and assessee's books of accounts were not rejected by the AO, therefore, genuineness of the transactions cannot be doubted. The Ld. Counsel also took us through paper book page no. 438 and stated that assessee made the cash withdrawal from the bank to pay the customers from whom assessee purchased old gold, therefore cash withdrawal made by the assessee from his bank account was sufficient to pay the customer against cash purchase. Hence, there is complete nexus which shows that assessee is doing genuine business. The Ld. Counsel also submitted before us that the period in which the assessee had purchased the old gold, was the period when the prices of the gold were lower side and subsequently the assessee sold at higher price. The moto of the business is to earn the profit, therefore assessee purchased the old gold at lower price and subsequently in fact the gold prices were increased, therefore, the entire purchases were for the purpose of business.

16. We note that the paramount consideration of section 40A(3) is to curb and reduce the possibilities of black money transactions, as held by the Hon`ble Supreme Court in the case of Attar Singh Gurmukh Singh, 191 ITR 667, that section 40A(3) of the Act does not eliminate considerations

of business expediencies. The Hon`ble Rajasthan High Court in the case of Smt. Harshila Chordia Vs. ITO 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. The Coordinate Bench of ITAT Jaipur in the case of Daga Royal Arts, 94 taxmann.com 401 (JP-trib) held that no disallowance under section 40A(3) of the Act should be made where identity of sellers from whom various plots of land had been purchased in cash and source of cash payments as withdrawals from assessee`s bank account had been established and genuineness of transaction had also been established, as evidenced by the registered sale deeds and lastly test of business expediency had also been met. The detailed findings of the Coordinate Bench are reproduced below:

*“18. We have heard the rival contentions and perused the material available on record. It would be relevant to refer to the provisions of section 40A(3) of the Act which reads as under:*

*‘(3) 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 exceeds twenty thousand rupees, no deduction shall be allowed in respect of such expenditure.*

*(3A) Where an allowance has been made in the assessment for any year in respect of any liability incurred by the assessee for any expenditure and subsequently during any previous year (hereinafter referred to as subsequent year) the assessee makes payment in respect thereof, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, the payment so made shall be deemed to be the profits and gains of business or profession and accordingly chargeable to income-tax as income of the subsequent year if the payment or aggregate of payments made to a person in a day, exceeds twenty thousand rupees:*

***Provided** that no disallowance shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-section (3) and this sub-section 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 payee bank draft exceeds twenty thousand rupees, in such cases and under such circumstances as may be prescribed, having regard to the nature and extent of banking facilities available, considerations of business expediency and other relevant factors :*

***Provided further** that in the case of payment made for plying, hiring or leasing goods carriages, the provisions of sub-sections (3) and (3A) shall*

have effect as if for the words "twenty thousand rupees", the words "thirty-five thousand rupees" had been substituted.

(4) Notwithstanding anything contained in any other law for the time being in force or in any contract, where any payment in respect of any expenditure has to be made by an account payee cheque drawn on a bank or account payee bank draft in order that such expenditure may not be disallowed as a deduction under sub-section (3), then the payment may be made by such cheque or draft; and where the payment is so made or tendered, no person shall be allowed to raise, in any suit or other proceeding, a plea based on the ground that the payment was not made or tendered in cash or in any other manner.'

19. The aforesaid provisions have to be considered and interpreted in light of various authorities which have been quoted at the Bar and relied upon by the ld AR and ld DR in support of their respective contentions.

20. In case of Attar Singh Gurmukh Singh (supra), the matter which came up for consideration before the Hon'ble Supreme Court, the facts of the case were that assessee had made payment in cash exceeding a sum of Rs. 2,500/- for purchase of certain stock-in-trade. Payments were not allowed as deductions in the computation of income under the head "profits and gains of business or professions" as the same were held to be in contravention of section 40A(3) read with that 6DD of the Income rules. In that factual background, the question regarding validity of section 40A(3) and applicability of the said provisions to payment made for acquiring stock-in-trade came up for consideration before the Hon'ble Supreme Court.

21. The Hon'ble Supreme Court referring to the provisions of section 40A(3) and Rule 6DD and in particular, Rule 6DD(j), as existed at relevant point in time, has held as under:—

"6. As to the validity of section 40A(3), it was urged that if the price of the purchased material is not allowed to be adjusted against the sale price of the material sold for want of proof of payment by a crossed cheque or crossed bank draft, then the income-tax levied will not be on the income but it will be on an assumed income. It is said that the provision authorizing levy tax on an assumed income would be a restriction on the right to carry on the business, besides being arbitrary.

7. In our opinion, there is little merit in this contention. Section 40A(3) must not be read in isolation or to the exclusion of rule 6DD. The section must be read along with the rule. If read together, it will be clear that the provisions are not intended to restrict the business activities. There is no restriction on the assessee in his trading activities. Section 40A(3) only empowers the Assessing Officer to disallow the deduction claimed as expenditure in respect of which payment is not made by crossed cheque or crossed bank draft. The payment by crossed cheque or crossed bank draft is insisted on to enable the assessing authority to ascertain whether the payment was genuine or whether it was out of the income from disclosed sources. The terms of section 40A(3) are not absolute. Consideration of business expediency and other relevant factors are not excluded. The genuine and bona fide transactions are not taken out of the sweep of the section. It is open to the assessee to furnish to the

*satisfaction of the Assessing Officer the circumstances under which the payment in the manner prescribed in section 40A(3) was not practicable or would have caused genuine difficulty to the payee. It is also open to the assessee to identify the person who has received the cash payment. Rule 6DD provides that an assessee can be exempted from the requirement of payment by a crossed cheque or crossed bank draft in the circumstances specified under the rule. It will be clear from the provisions of section 40A(3) and rule 6DD that they are intended to regulate the business transactions and to prevent the use of unaccounted money or reduce the chances to use black-money for business transactions. - Mudiam Oil Co. v. ITO [1973] 92 ITR 519 (AP). If the payment is made by a crossed cheque on a bank or a crossed bank draft, then it will be easier to ascertain, when deduction is claimed, whether the payment was genuine and whether it was out of the income from disclosed sources. In interpreting a taxing statute the Court cannot be oblivious of the proliferation of black-money which is under circulation in our country. Any restraint intended to curb the chances and opportunities to use or create black-money should not be regarded as curtailing the freedom of trade or business."*

*22. Further, the Hon'ble Supreme Court upheld the applicability of section 40A(3) to payment made for acquiring stock-in-trade and raw materials and also affirmed the decision of Hon'ble Rajasthan High Court in case of Fakri Automobiles v. CIT [1986] 24 Taxman 578/160 ITR 504 (Raj) to the effect that the payments made for purchasing stock-in-trade or raw material should also be regarded as expenditure for the purposes of section 40A(3) of the Act.*

*23. The Hon'ble Supreme Court has therefore upheld the constitutional validity of section 40A(3) of the Act and has held that the provisions are not intended to restrict the business activities and restraint so provided are only intended to curb the chances and opportunities to use or create black money and the same should not be regarded as curtailing the freedom of trade or business. The Hon'ble Supreme Court has thus laid great emphasis on the intention behind introduction of these provisions and it would therefore be relevant to examine whether in the present case, there is any violation of such intention and if ultimately, it is determined that such intention has been violated, then certainly, the assessee deserves the disallowance of the expenditure so claimed.*

*24. The Hon'ble Supreme Court referring to the provisions of section 40A(3) as existed at relevant point in time which talks about considerations of business expediency and other relevant factors and Rule 6DD(j) which provides for the exceptional or unavoidable circumstances and the fact that the payment in the manner aforesaid was not practical or would have caused genuine difficulty to the payee and furnishing the necessary evidence to the satisfaction of the Assessing Officer as to the genuineness of the payments and the identity of the payee has held that:*

*"The terms of section 40A(3) are not absolute. Consideration of business expediency and other relevant factors are not excluded. The genuine and bona fide transactions are not taken out of the sweep of the section. It is open to the assessee to furnish to the satisfaction of the Assessing Officer the circumstances under which the payment in the manner prescribed in section 40A(3) was not practicable or would have caused genuine difficulty to the*

payee. It is also open to the assessee to identify the person who has received the cash payment. Rule 6DD provides that an assessee can be exempted from the requirement of payment by a crossed cheque or crossed bank draft in the circumstances specified under the rule."

25. Here, it is relevant to note that there has been no change in the provisions of section 40A(3) in so far as considerations of business expediency and other relevant factors are concerned, as existed at relevant point in time and as considered by the Hon'ble Supreme Court and the provisions of section 40A(3) as exist now and relevant for the impugned assessment year i.e. AY 2013-14. However, Rule 6DD(j) has been amended and by notification dated 10.10.2008, it now provides for an exception only in a scenario where the payment was required to be made on a day on which banks were closed either on account of holiday or strike. A question which arises for consideration is whether the legal proposition so laid down by the Hon'ble Supreme Court regarding consideration of business expediency and other relevant factors has been diluted by way of delegated legislation in form of Income Tax Rules when the parent legislation in form of section 40A(3) to which such delegated legislation is subservient has been retained in its entirety. Alternatively, can it be said that what has been prescribed as exceptional circumstances in Rule 6DD as amended are exhaustive enough and which visualizes all kinds and nature of business expediency in all possible situations.

26. If we look at the legislative history of section 40A(3) and Rule 6DD, we find that initially, section 40A(3) provides for disallowance of 100% of the expenditure unless the matter falls under exception as provided in Rule 6DD(j) Later on, section 40A(3) has been amended to provide for disallowance of 20% of the expenditure incurred in cash and Rule 6DD(j) was omitted. Thereafter, by virtue of another amendment, disallowance under section 40A(3) was increased from 20% to 100%, however, Rule 6DD(j) was not reintroduced in original form to provide for exceptional and unavoidable circumstances rather it was restricted to payment by way of salary to employees and thereafter, by virtue of latest amendment in year 2008 to payments made on a day on which the banks were closed on account of holiday or strike.

27. We do not believe that by virtue of these amendments, the legal proposition so laid down by the Hon'ble Supreme court regarding consideration of business expediency and other relevant factors has been diluted in any way. At the same time, we also believe that Rule 6DD as amended are not exhaustive enough and which visualizes all kinds and nature of business expediency in all possible situations and it is for the appropriate authority to examine and provide for a mechanism as originally envisaged which provides for exceptional or unavoidable circumstances to the satisfaction of the Assessing officer whereby genuine business expenditure should not suffer disallowance.

28. Further, the Courts have held from time to time that the Rules must be interpreted in a manner so as to advance and not to frustrate the object of the legislature. The intention of the legislature is manifestly clear and which is to curb the chances and opportunities to use or create black money and to ascertain whether the payment was genuine or whether it was out of the income from disclosed sources. And Section 40A(3) continues to provide that no disallowance shall be made in such cases and under such circumstances as may

be prescribed having regard to the nature and extent of the banking facilities available, consideration of business expediency and other relevant factors. In our view, given that there has been no change in the provisions of section 40A(3) in so far as consideration of business expediency and other relevant factors are concerned, the same continues to be relevant factors which needs to be considered and taken into account while determining the exceptions to the disallowance as contemplated under section 40A(3) of the Act so long as the intention of the legislature is not violated. We find that our said view find resonance in decisions of various authorities, which we have discussed below and thus seems fortified by the said decisions.

29. We refer to the decision of the Hon'ble Rajasthan High Court in case of Smt. Harshila Chordia (*supra*), where the facts of case were that the assessee had made certain cash payments towards purchase of scooter/mopeds which exceeded Rs. 10,000/- in each case to the principal agent instead of making payment through the cross cheques or bank draft. The Assessing Officer invoked the provisions of section 40A(3) and held that they were no exceptional circumstances falling under rule 6DD which could avoid consequences of the provisions of section 40A(3) of the Act. The ld. CIT (A) held that such exceptional circumstances did exist. However, the findings of the ld. CIT (A) were reversed by the Tribunal and the matter came up for consideration before the Hon'ble High Court.

30. The Hon'ble High Court observed that the principal reason which weighed with the Tribunal in discarding the explanation furnished by the assessee was that the case of the assessee did not fall in any of the clauses enumerated in the circular issued by the CBDT about the explanatory note appended to clause (j) was to operate as it was existing at the relevant time and enumerated circumstances in the circular was exhaustive of exceptional circumstances. The Hon'ble High Court observed that the Tribunal has erroneously assumed that enumeration of instances in the circular in which the provisions of clause (j) under rule 6DD would operate to be exhaustive of such circumstances and had not been properly understood its implication. It was further observed by the Hon'ble High Court that primary object of enacting section 40A(3) in its original incarnation was two-fold, firstly, putting a check on trading transactions with a mind to evade the liability to tax on income earned out such transaction and, secondly, to inculcate the banking habits amongst the business community. The consequence which was provided was to disallow of deduction of such payments/expenses which were not through bank either by crossed cheques or by demand draft or by pay order. It was further held by the Hon'ble High Court that:

".....Apparently, this provision was directly related to curb the evasion of tax and inculcating the banking habits. Therefore, the consequences, which were to befall on account of non-observation of sub-section (3) of section 40A must have nexus to the failure of such object. Therefore the genuineness of the transactions and it being free from vice of any device of evasion of tax is relevant consideration which has been overlooked by the Tribunal."

31. It was accordingly held by the Hon'ble High Court that it is the relevant consideration for the assessing authority under the Income Tax Act that before invoking the provisions of section 40A(3) in light of Rule 6DD as clarified by

*circular of the CBDT that whether the failure on the part of the assessee in adhering to requirement of provisions of section 40A(3) has any such nexus which defeats the object of provision so as to invite such a consequence. This is particularly so, because the consequence provided u/s 40A(3) for failure to make payments through bank is not absolute in terms nor automatic but exceptions have been provided and leverage has been left for little flexing by making a general provision in the form of clause (j) in rule 6DD. Thereafter, the Hon'ble High Court refers to the clause 6DD(j) and the circular dated 31st May, 1977 issued by the Board in the context of what shall constitute exceptional and unavoidable circumstances within the meaning of section Clause (j). The Hon'ble High Court observed that the circular in paragraph 5 gives a clear indication that rule 6DD(j) has to be liberally construed and ordinarily where the genuineness of the transaction and the payment and the identity of the receiver is established, the requirement of rule 6DD(j) must be deemed to have been satisfied. The Hon'ble High Court observed that apparently section 40A(3) was intended to penalize the tax evader and not the honest transactions and that is why after framing of rule 6DD(j), the Board stepped in by issuing the aforesaid circular and this clarification, in our opinion, is in conformity with the principle enunciated by the Supreme Court in CTO v. Swastik Roadways [2004] 3 SCC 640.*

*32. The legal proposition that arises from the above decision of the Hon'ble Rajasthan High Court is that the consequences, which were to befall on account of non-observation of sub-section (3) of section 40A must have nexus to the failure of such object. Therefore the genuineness of the transactions and it being free from vice of any device of evasion of tax is relevant consideration and which should be examined before invoking the rigours of section 40A(3) of the Act.*

*33. In case of Anupam Tele Services the matter which came up for consideration before the Hon'ble Gujarat High Court, the facts of the case were that the assessee who is involved in the business of distribution mobile and recharge vouchers of Tata Tele Services Ltd had made payment of Rs. 33,10,194/- to Tata Tele Services Ltd., by cash on different dates. The assessee had made such payment through account payee cheques till 22nd Aug, 2005, when a circular was issued by Tata Tele Services Ltd., requiring the appellant to deposit cash at the company's office at Surat. In that factual background, the Hon'ble High Court held as under:—*

*"17. Rule 6DD of the IT Rules, 1962 provides for situations under which disallowance under s. 40A(3) shall not be made and no payment shall be deemed to be the profits and gains of business or profession under the said section. Amongst the various clauses, cl. (j) which is relevant, read as under:*

*(j) where the payment was required to be made on a day on which the banks were closed either on account of holiday or strike;*

*18. It could be appreciated that s. 40A and in particular sub-cl. (3) thereof aims at curbing the possibility of on-money transactions by insisting that all payments where expenditure in excess of a certain sum (in the present case twenty thousand rupees) must be made by way of account payee cheque drawn on a bank or account payee bank draft.*

19. *As held by the Apex Court in case of Attar Singh Gurmukh Singh (supra). ".In our opinion, there is little merit in this contention. Sec. 40A(3) must not be read in isolation or to the exclusion of r. 6DD. The section must be read along with the rule. If read together, it will be clear that the provisions are not intended to restrict the business activities. There is no restriction on the assessee in his trading activities. Sec. 40A(3) only empowers the A.O. to disallow the deduction claimed as expenditure in respect of which payment is not made by crossed cheque or crossed bank draft. The payment by crossed cheque or crossed bank draft is insisted on to enable the assessing authority to ascertain whether the payment was genuine or whether it was out of the income from undisclosed sources, The terms of s. 40A(3) are not absolute. Considerations 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. It is open to the assessee to furnish to the satisfaction of the A.O. the circumstances under which the payment in the manner prescribed in s. 40A(3) was not practicable or would have caused genuine difficulty to the payee. It is also open to the assessee to identify the person who has received the cash payment. Rule 6DD provides that an assessee can be exempted from the requirement of payment by a crossed cheque or crossed bank draft in the circumstances specified under the rule. It will be clear from the provisions of s. 40A(3) and r. 6DD that they are intended to regulate business transactions and to prevent the use of unaccounted money or reduce the chances to use black money for business transactions:"*

20. *It was because of these considerations that this Court in case of Hynoup Foods (P.) Ltd. (supra) observed that the genuineness of the payment and the identify of the payee are the first and foremost requirements to invoke the exceptions carved out in r. 6DD(j) of the IT Rules, 1962.*

21. *In the present case, neither the genuineness of the payment nor the identity of the payee were in any case doubted. These were the conclusions on facts drawn by the CIT(A). The Tribunal also did not disturb such facts but relied solely on r. 6dd(j) of the rules to hold that since the case of the assessee did not fall under the said exclusion clause nor was covered under any of the clauses of r. 6DD, consequences envisaged in s. 40A(3) of the Act must follow.*

22. *In our opinion, the Tribunal committed an error in coming to such a conclusion. We would base our conclusions on the following reasons:*

(a)	<i>The paramount consideration of section 40A(3) is to curb and reduce the possibilities of black money transactions. As held by the Supreme Court in Attar Singh Gurmukh Singh (supra), section 40A(3) of the Act does not eliminate considerations of business expediencies.</i>
(b)	<i>In the present case, the appellant assessee was compelled to make cash payments on account of peculiar situation. Such situation was as follow-</i>
(i)	<i>the principal company, to which the assessee was a distributor, insisted that cheque payment from a co-operative bank would not do, since the realization</i>

		<i>takes a longer time;</i>
(ii)		<i>the assessee was, therefore, required to make cash payments only;</i>
(iii)		<i>Tata Tele Services Ltd. assured the assessee that such amount shall be deposited in their bank account on behalf of the assessee;</i>
(iv)		<i>It is not disputed that the Tata Tele Services Ltd. did not act on such promise;</i>
(v)		<i>if the assessee had not made cash payment and relied on cheque payments alone, it would have received the recharge vouchers delayed by 4/5 days and thereby severely affecting its business operations.</i>

*We would find that the payments between the assessee and the Tata Tele Services Ltd. were genuine. The Tata Tele Services Ltd. had insisted that such payments be made in cash, which Tata Tele Services Ltd. in turn assured and deposited the amount in a bank account. In the facts of the present case, rigors of s. 40A(3) of the Act must be lifted.*

*23. We notice that the Division Bench of the Rajasthan High Court in case of Smt. Harshila Chordia v. ITO (2007) 208 CTR (Raj) had observed that the exceptions contained in r. 6DD are not exhaustive and that the said rule must be interpreted liberally."*

*34. In case of Ajmer Food Products (P.) Ltd. v. JCIT [IT Appeal No. 625 (jp) of 2014, dated 28-9-2016] a similar issue has come up before the Co-ordinate Bench and speaking through one of us, it was held as under:*

*"4.5 The genuineness of the transaction as well as the identity of the payee are not disputed. Further, the appellant has explained the business expediency of making the cash payments to both the parties which has not been controverted by the Revenue. Following the decision of Gujarat High Court in case of Anupam Tele Services (supra) and Rajasthan High Court in case of Harshila Chordia (supra), the addition of Rs. 45,738/- under section 40A(3) is deleted."*

*35. In case of Gurdas Garg (supra), the matter which came up for consideration before the Hon'ble Punjab & Haryana High Court, the facts of the case are pari materia to the instant case and the ratio of the said decision clearly applies in the instant case. In that case, the facts of the case were that the assessee was engaged in trading in properties and during the course of assessment proceedings, the AO observed that there are transactions where the payments have been made in excess of Rs. 20,000/- in cash which were disallowed u/s 40A(3) of the Act. The Hon'ble High Court held that rule 6DD(j) is not exhaustive of the circumstances in which the proviso to section 40A(3) is applicable and it only illustrative. The Hon'ble High Court refers to the decision of the Hon'ble Rajasthan High Court in case of Smt. Harshila Chordia (supra) and the decision of Hon'ble Supreme Court in case of Attar Singh Gurmukh Singh (supra). The High Court further observed that the ld. CIT(A) has given a finding that the identity of the payee i.e. vendors in respect of land purchase by the appellant was established, the sale deeds were produced, the genuineness*

thereof was accepted and the amount paid in respect of each of these agreement was satisfied before the Stamp Registration Authority and the transactions were held to be genuine and the bar against the grant of deductions u/s 40A(3) of the Act was not attracted. The Hon'ble High Court further observed that the Tribunal did not upset these findings including as to the genuineness and the correctness of the transactions and it is also important to note that the Tribunal noted the contention on behalf of the appellant that there was a boom in the real estate market and therefore it was necessary, therefore, to conclude the transactions at the earliest and not to postpone them; that the appellant did not know the vendors and obviously therefore, insisted for payment in cash and that as a result thereof, payments had to be made immediately to settle the deals. The Tribunal did not doubt this case. The Tribunal, however, held that the claim for deduction was not sustainable. In view of Section 40A(3) as the payments which were over Rs. 20,000/- were made in cash. The Hon'ble High Court accordingly observed that "the Tribunal has not disbelieved the transactions or the genuineness thereof nor has it disbelieved the fact that payments having been made. More importantly, the reasons furnished by the appellant for having made the cash payments, which we have already adverted to, have not been disbelieved. In our view, assuming these reasons to be correct, they clearly make out a case of business expediency."

36. The Co-ordinate Bench in case of Dhuri Wine v. Dy. CIT [\[2017\] 83 taxmann.com 20 \(Chd. - Trib.\)](#) has held that the proposition so laid down by the Hon'ble High Court in case of Gurdas Garg (supra) is quite unambiguous to the effect that even if the case of the assessee does not fall in any of the clauses of Rule 6DD of the Income Tax Rules, invoking the provisions of section 40A(3) of the Act can be dispensed with if the assessee is able to prove the business expediency because of which it has to make the cash payments, the genuineness of the transactions have also to be verified.

37. The Co-ordinate Bench in case of Rakesh Kumar v. Asstt. CIT [IT Appeal No. 102 (Asr.) of 2014, dated 09-03-2016] relying on the decision of Hon'ble Punjab and Haryana High Court in case of Gurdas Garg (supra) has held that the genuineness of the payment has not been doubted as the Assessing Officer himself has held that sale deeds of properties were registered with the Revenue department of the Government. Therefore, following the decision of Hon'ble Punjab and Haryana High Court, the payment for purchase of land was allowed.

38. We further note that in case of ACE India Abodes limited [DB Appeal No. 45/2012, dated 11-09-2017], a similar issue has come up before the Hon'ble Rajasthan High Court regarding payment for purchase of land from various agriculturist for which the assessee has paid consideration in cash and shown the land as its stock-in-trade. The Hon'ble Rajasthan High Court referring to the intent behind introduction of section 40A(3) and catena of decisions right from Attar Singh Gurmukh Singh, Smt. Harshila Chordia, Gurdas Garg, Anupam Tele Services referred supra has decided the issue in favour of the assessee and against the department.

39. The issue which is being disputed before us has to be considered and decided in light of facts on record and the legal position which emerges from the above referred decisions. The facts of the case are that during the year

under consideration, the assessee firm has purchased 26 pieces of plot of land in the month of April and May, 2012 from various persons for a total consideration of Rs. 2,46,28,425/-, out of which payment amounting to Rs. 1,71,67,000/- were made in cash to various persons, payment amounting to Rs. 59,48,920/- were made in cheque to various persons, and Rs. 8,15,700/- and Rs. 6,84,296/- were paid in cash towards stamp duty and court fee respectively. During the course of assessment proceedings, the assessee submitted copies of the sale deed, the particulars of which find mention on page 7 and 8 of the assessment order. On perusal of the said details, it is observed that the said details contains the name of the seller, date of sale deed, plot no., purchase value, stamp duty, Court fee and mode of payment - cash/cheque. Therefore, as far as the identity of the persons from whom the purchases have been made and genuineness of the transactions of purchase of various plots of land and payment in cash is concerned, the same is evidenced by the registered sale deeds and there is no dispute which has been raised by the Revenue either during the assessment proceedings or before us. The identity of the sellers and genuineness of the transactions is therefore fully established in the instant case.

40. From perusal of the assessment order, it is further noted that the AO, on perusal of the details of the properties purchased, as per copies of the sale deed furnished, held that the assessee had made cash payments regularly and no specific circumstances have been brought to his knowledge that the cash payments were made due to some unavoidable circumstances. It was held by the AO that maximum cash payments were made to persons residing in Jaipur city and in single family, repeated cash payments were made which itself shows that there were no unavoidable circumstances to make cash payments to the sellers. What is therefore relevant to note that the AO has appreciated the necessity of determining the unavoidable circumstances which could have led the assessee to make cash payments. During the course of assessment proceedings, it was submitted by the assessee that the payment for purchase of land has been made in cash because the sellers were new to the assessee and refused to accept the cash. It was submitted that the delay in making the cash payment, it could have lost the land deals. In this regard, the ld AR submitted before us that the assessee had purchased the lands both through cash and cheques. Based on the requirement of the seller, assessee had selected the mode of payment. For the sellers, who had insisted the payments in cash, assessee had withdrawn the cash from bank on the same date of registry and made the payments to seller accordingly. The withdrawals from bank and payments to seller have been tabulated below as per dates below:—

Date	Bank	Grand Total	Cumulative balance	Utilization	Net Balance	Amount	18,00,000
	ICICI Bank	Yes Bank			Date		
5-Apr-12	14,50,000	3,50,00	18,00,000	18,00,000			5,07,00
9-Apr-12	-	9,00,000	9,00,000	27,00,000	9-Apr-12	21,93,000	3,34,000
11-Apr-12	-	2,00,000	2,00,000	29,00,000	11-Apr-12	3,73,000	3,34,000
12-Apr-12	-	-	-	29,00,000	-	-	3,34,000
13-Apr-12	-	-	-	29,00,000	-	-	11,97,100
19-Apr-12	-	30,00,000	30,00,000	59,00,000	23-Apr-12	21,36,900	11,57,000
24-Apr-12	30,00,000	25,00,000	55,00,000	1,14,00,000	24-Apr-12	55,40,100	11,57,000

25-Apr-12	-	-	-	1,14,00,00 0	-	-	11,57,000
30-Apr-12	-	-	-	1,14,00,00 0	-	-	11,57,000
4-May-12	-	-	-	1,14,00,00 0	-	-	11,57,000
7-May-12	-	-	-	1,14,00,00 0	-	-	11,57,000
8-May-12	19,00,000	23,00,000	42,00,000	1,56,00,00 0	8-May-12	38,55,000	15,02,000
12-May-12	-	-	-	1,56,00,00 0	-	-	15,02,000
14-May-12	-	-	-	1,56,00,00 0	-	-	15,02,000
15-May-12	-	-	-	1,56,00,00 0	-	-	15,02,000
16-May-12	-	15,00,000	15,00,000	1,71,00,00 0	-	-	30,02,000
17-May-12	-	15,00,000	15,00,000	1,86,00,00 0	17-May-12	30,69,000	14,33,000
<i>Total</i>	63,50,000	1,42,50,00 0	1,86,00,000			1,71,67,00 0	

*41. It was submitted by the ld AR that in order to secure the deal, assessee had no other option but to make the payment in cash. Cash payments were made from the disclosed sources being the amount withdrawn from bank. It was for sheer insistence of the seller that the payments were made in cash. Had the assessee denied the cash payment looking to the provisions of sections 40A(3), the deal could not have been finalized. In such circumstances, in the business interest and to complete the deal, the assessee had chosen to make the payments in cash fortified through registered sale deed. The payment has been made out of the explained sources, through the registered document and as a disclosed transaction.*

*42. We find force in the contentions so raised by the ld AR. The transactions have been executed by the assessee within a span of one and half month and there are transactions where the payment has been made through cheque and there are transactions where the payment has been made through cash. The said contentions are supported by the fact that on the same day, there are cash and cheque payments as evidenced from the details of the transactions appearing at page 7 and 8 of the assessment order. It is therefore clear that the assessee was having sufficient bank balance and only at the insistence of the specific sellers, the assessee has withdrawn cash and made payment to them and wherever, the seller has insisted on cheque payments, the payment has been made by cheque. This makes out a case that the assessee has business expediency under which it has to make payment in cash and in absence of which, the transactions could not be completed. The second proviso to section 40A(3) refers to "the nature and extent of banking facility, consideration of business expediency and other relevant factors" which means that the object of the legislature is not to make disallowance of cash payments which have to be compulsory made by the assessee on account of business expediency. Further, the source of cash payments is clearly identifiable in form of the withdrawals from the assessee's bank accounts and the said details were submitted before the lower authorities*

and have not been disputed by them. It is not the case of the Revenue either that unaccounted or undisclosed income of the assessee has been utilised in making the cash payments.

43. In the entirety of facts and circumstances of the case and respectfully following the legal proposition laid down by the various Courts and Coordinate Benches referred supra, we are of the view that the identity of the persons from whom the various plots of land have been purchased and source of cash payments as withdrawals from the assessee's bank account has been established. The genuineness of the transaction has been established as evidenced by the registered sale deeds and lastly, the test of business expediency has been met in the instant case. Further, as held by the Hon'ble Rajasthan High Court in case of Smt. Harshila Chordia (supra), the consequences, which were to befall on account of non-observation of sub-section (3) of section 40A must have nexus to the failure of such object. Therefore the genuineness of the transactions and it being free from vice of any device of evasion of tax is relevant consideration. The intent and the purpose for which section 40A(3) has been brought on the statute books has been clearly satisfied in the instant case. Therefore, being a case of genuine business transaction, no disallowance is called for by invoking the provisions of section 40A(3) of the Act.

*In the result, the appeal of the assessee is allowed."*

17. We note that only at the time of actual purchase, with the result that it was not possible to obtain bank drafts to make the purchase, and the identity of the payee has been successfully established, cash payment made for the purchase could not be disallowed u/s 40A(3) as held by the Hon'ble Panjab and Haryana high court in the case of *CIT v. Brij Mohan Singh & Co.* [1994] 74 Taxman 385 (P&H)]. Besides, the Payments made in excess of Rs. 20,000/- by ginning factory to its agents for procuring cotton could not be disallowed, as held in the case of *CIT v. Sri Shanmuga Ginning Factory* [2013] 37 taxmann.com 422/218 Taxman 76 (Mag.) (Mad.)]. It is pertinent to notice that the primary object of enacting section 40A(3) was two-fold, firstly, putting a check on trading transactions with a mind to evade the liability to tax on income earned out of such transaction and, secondly, to inculcate the banking habits amongst the business community. Apparently, this provision was directly related to curb the evasion of tax and inculcating the banking habits. In the assessee's case under consideration, we note that each cash payment is below Rs.20,000/- hence

there is no violation of provisions of section 40A(3) of the Act, therefore, considering these facts and circumstances, we note that since there is no violation of provisions of section 40A(3) of the Act, hence we delete the addition.

18. In the result, appeal filed by the assessee is allowed.

Order pronounced on 26/06/2023 in the open court.

Sd/-  
(PAWAN SINGH)  
JUDICIAL MEMBER

सूरत /Surat

दिनांक/ Date: 26/06/2023

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

Sd/-  
(Dr. A.L. SAINI)  
ACCOUNTANT MEMBER

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS  
ITAT, Surat

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