

**IN THE INCOME TAX APPELLATE TRIBUNAL
“RAJKOT” BENCH, RAJKOT**

[Conducted through E-Court at Ahmedabad]

**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 198/Rjt/2022

(निर्धारण वर्ष / Assessment Year : 2017-18)

M/s. Dharti Engineers Sardar Nagar Street No.1, Chakkargadh Road, Amreli - 365601	बनाम/ Vs.	The PCIT-1 Rajkot
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADFD8555E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Appellant by :	Shri D. M. Rindani, A.R.
Respondent by :	Shri Shramdeep Sinha, CIT.D.R.

सुनवाई की तारीख /Date of Hearing	22/08/2023
घोषणा की तारीख /Date of Pronouncement	29/08/2023

ORDER

PER Ms. MADHUMITA ROY - JM:


The instant appeal at the instance of the assessee is directed against the order dated 21.01.2022 passed by the Principal Commissioner of Income Tax-3, Rajkot (in short ‘the PCIT’) holding the assessment order dated 10.12.2019 passed by the DC/ACIT, CIR-3(1), RKT under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred as to ‘the Act’) erroneous and prejudicial to the interest of Revenue and setting aside the issue to the file of the Ld. AO with a direction upon him to pass a fresh assessment only to the extent of the issues in respect of the provision of Section 40A(3) of the Act with proper enquiry and verification of the claim and its genuineness for A.Y. 2017-18.

2. The short fact leading to the case is this that the assessee by paying huge cash in excess of Rs.20,000/- alleged to have violated the provision of Section 40A(3) of the Act. The details whereof has been reproduced in the order passed by the Ld. CIT(A) in the following manner:

<i>Sr. No.</i>	<i>Voucher No.</i>	<i>Date</i>	<i>Name of the Party</i>	<i>Amount paid in excess of Rs.20,000/-</i>	<i>Remarks</i>
1	110	30-04-2016	Animeshkumar D. Jha	25,000.00	Withdrawal by Partner
2	470	30-06-2016	Animeshkumar D. Jha	25,000.00	Withdrawal by Partner
3	827	30-08-2016	Animeshkumar D. Jha	25,000.00	Withdrawal by Partner
4	839	31-08-2016	Rajesh N. Talaviya	50,000.00	Withdrawal by Partner
5	922	15-09-2016	Rashmiben A. Jha	50,000.00	Withdrawal by Partner
6	1247	31-10-2016	Animeshkumar D. Jha	25,000.00	Withdrawal by Partner
7	1248	31-10-2016	Rajesh N. Talaviya	50,000.00	Withdrawal by Partner
8	1249	31-10-2016	Rashmiben A. Jha	50,000.00	Withdrawal by Partner
9	1250	31-10-2016	Varshaben R. Talaviya	50,000.00	Withdrawal by Partner
10	1500	31-12-2016	Animeshkumar D. Jha	25,000.00	Withdrawal by Partner
11	1501	31-12-2016	Rajesh N. Talaviya	50,000.00	Withdrawal by Partner
12	1502	31-12-2016	Varshaben R. Talaviya	50,000.00	Withdrawal by Partner
13	1503	31-12-2016	Site Expenses	15,000.00	Salary Exp.
14	1693	31-01-2017	Rashmiben A. Jha	50,000.00	Withdrawal by Partner
15	1877	28-02-2017	Animeshkumar D. Jha	25,000.00	Withdrawal by Partner
16	1878	28-02-2017	Rajesh N. Talaviya	50,000.00	Withdrawal by Partner
17	1989	15-03-2017	Animeshkumar D. Jha	25,000.00	Withdrawal by Partner
18	1990	15-03-2017	Rashmiben A. Jha	50,000.00	Withdrawal by Partner
19	1991	1991	15-03-2017	Varshaben R. Talaviya	50,000.00
20	1992	15-03-2017	Site Supervisor & Engi. Salary	20,000.00	Salary Exp.
				7,60,000.00	

3. The Ld. PCIT is of the opinion that the Ld. AO failed to enquire the above aspect in the books of accounts including the cash book and vouchers while completing the assessment in the case of the assessee. A show cause notice, therefore, dated 20.07.2021 was issued proposing to subject the assessment order of the Ld. AO to revision under Section 263 of the Act. The same annexed to the paper book filed by the assessee appearing at Page No.3 to 5 therein is also reproduced hereinbelow:

(3)


GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME TAX
PCIT, Rajkot-1

To, DHARTI ENGINEERS SARDAR NAGAR STREET NO. 1, CHAKKARGADH ROAD AMRELI AMRELI 365601, Gujarat India			
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PAN/TAN: AADFD8555E	AY: 2017-18	DIN & Notice No - ITBA/REV/F/REV1/2021- 22/1034329935(1)	Dated: 20/07/2021
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NOTICE FOR THE HEARING

M/s/Mr/Ms

Subject: Notice for Hearing in respect of Revision proceedings u/s 263 of the **THE INCOME TAX ACT, 1961** – Assessment Year **2017-18**

In this regard, a hearing in the matter is fixed on **03/08/2021** at **11:00 AM**. You are requested to attend in person or through an authorized representative to submit your representation, if any alongwith supporting documents/information in support of the issues involved (as mentioned below). If you wish that the Revision proceeding be concluded on the basis of your written submissions/representations filed in this office, on or before the said due date, then your personal attendance is not required. You also have the option to file your submission from the e-filing portal using the link: incometaxindiaefiling.gov.in

In your case, the Assessment for A.Y. 2017-18, was finalized u/s.143 (3) of the Act on 10-12-2019 determining total Income at Rs.31,93,020/-.

2. On perusal of record, it is seen that during the previous year 2016-17 relevant to A.Y 2017-18, there are many instances when your firm had made payments in cash exceeds Rs. 20,000/- in a single voucher aggregating to Rs. 7,60,000/- as under :

Sr. No.	Voucher No.	Date	Amount paid in excess of Rs.20,000/-
1	110	30-04-2016	25,000

Note: If digitally signed, the date of digital signature may be taken as date of document.
AAYAKAR BHAWAN, RACE COURSE RING ROAD, RAJKOT, Gujarat, 360001
Email: RAJKOT.CIT1@INCOMETAX.GOV.IN.

The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in.
Document identification No.

AADF08555E- DHARATI ENGINEERS
A.Y. 2017-18
ITBA/REVIF/REV1/2021- 22/1034326935(1)

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2	470	30-06-2016	25000
3	827	30-08-2016	25000
4	839	31-08-2016	50000
5	922	15-09-2016	50000
6	1247	31-10-2016	25000
7	1248	31-10-2016	50000
8	1249	31-10-2016	50000
9	1250	31-10-2016	50000
10	1500	31-12-2016	25000
11	1501	31-12-2016	50000
12	1502	31-12-2016	50000
13	1503	31-12-2016	15000
14	1693	31-01-2017	50000
15	1877	28-02-2017	25000
16	1878	28-02-2017	50000
17	1989	15-03-2017	25000
18	1990	15-03-2017	50000
19	1991	15-03-2017	50000

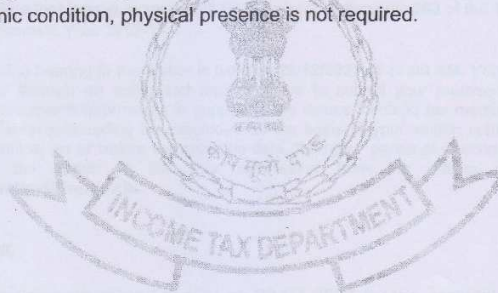
AADFD8555E- DHARATI ENGINEERS
A.Y. 2017-18
ITB/REV/F/REV1/2021-22/1034329835(1)

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20	1992	15-03-2017	20000
TOTAL			760000

As per the provisions of section 40A(3), any expenditure incurred by assessee other than specified mode as prescribed shall not be allowed as deduction. Therefore such expenses of Rs. 7,60,000/- should be disallowed and added to total income of your firm. However, the AO has not properly examined this issue.

3. Therefore, the assessment order passed by the Assessing Officer for A.Y 2017-18 may be prima facie erroneous in so far as it is prejudicial to interests of the revenue. Hence, proceedings u/s 263 of the Act are being initiated with a view to pass a suitable order. Before passing of such order, you are hereby given an opportunity of being heard in the matter. In this connection you are requested to furnish your reply / submission / explanation or objection if any by mail address id rajkot.cit1@incometax.gov.in / speed post to this office on or before 03-08-2021. Due to pandemic condition, physical presence is not required.



FATEH SINGH SIROWA
PCIT, Rajkot-1

Copy to:

The DCIT Circle 2(1), Rajkot

The Addl. CIT Range 2(1), Rajkot

FATEH SINGH SIROWA
PCIT, Rajkot-1


(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

This document is digitally signed

Signer: FATEH SINGH SIROWA
Date: Tuesday, July 20, 2021 11:56 AM
Location: GUJRAT, India

4. Followed by further notice dated 11.12.2021, which are reproduced hereinbelow:

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**GOVERNMENT OF INDIA**
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME TAX
PCIT, Rajkot-1

To, DHARATI ENGINEERS SARDAR NAGAR STREET NO. 1 , CHAKKARGADH ROAD AMRELI AMRELI 365601 , Gujarat India	
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PAN/TAN: AADFD8555E	AY: 2017-18	DIN & Notice No : ITBA/REV/F/REV1/2021- 22/1037715053(1)	Dated: 11/12/2021
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NOTICE FOR THE HEARING

M/s/Mr/Ms

Subject: Notice for Hearing in respect of Revision proceedings u/s 263 of the **THE INCOME TAX ACT, 1961** – Assessment Year **2017-18**.

In this regard, a hearing in the matter is fixed on **22/12/2021** at **11:00 AM**. You are requested to attend in person or through an authorized representative to submit your representation, if any alongwith supporting documents/information in support of the issues involved (as mentioned below). If you wish that the Revision proceeding be concluded on the basis of your written submissions/representations filed in this office, on or before the said due date, then your personal attendance is not required. You also have the option to file your submission from the e-filing portal using the link: incometaxindiaefiling.gov.in

महोदय/महोदया,

A notice was issued to you on 20-07-2021 by the erstwhile Pr. CIT-1, Rajkot, the brief of the same is as under:

" In your case, the Assessment for A.Y. 2017-18, was finalized u/s.143 (3) of the Act on 10-12-2019 determining total Income at Rs.31,93,020/-.

2. On perusal of record, it is seen that during the previous year 2016-17 relevant to A.Y 2017-18, there are many instances when your firm had made payments in cash exceeds Rs. 20,000/- in a single voucher aggregating to Rs. 7,60,000/- as under :

Sr. No.	Voucher No.	Date	Amount paid in excess of Rs.20,000/-

Note: If digitally signed, the date of digital signature may be taken as date of document.
AAYAKAR BHAWAN, RACE COURSE RING ROAD, RAJKOT, Gujarat, 360001
Email: RAJKOT.CIT1@INCOMETAX.GOV.IN,

The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in.
Document identification No.

AACFD0555E-DHARATI ENGINEERS
A.Y. 2017-18
ITBA/REVIT/REV1/2021-22/1037715053(1)

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1	110	30-04-2016	25,000
2	470	30-06-2016	25000
3	827	30-08-2016	25000
4	839	31-08-2016	50000
5	922	15-09-2016	50000
6	1247	31-10-2016	25000
7	1248	31-10-2016	50000
8	1249	31-10-2016	50000
9	1250	31-10-2016	50000
10	1500	31-12-2016	25000
11	1501	31-12-2016	50000
12	1502	31-12-2016	50000
13	1503	31-12-2016	15000
14	1693	31-01-2017	50000
15	1877	28-02-2017	25000
16	1878	28-02-2017	50000
17	1989	15-03-2017	25000
18	1990	15-03-2017	50000

AADF08655E- DHARATI ENGINEERS
A.Y. 2017-18
ITSA/REV/F/REV1/2021-22/1037715953(1)

19	1991	15-03-2017	50000
20	1992	15-03-2017	20000
TOTAL			760000

As per the provisions of section 40A(3), any expenditure incurred by assessee other than specified mode as prescribed shall not be allowed as deduction. Therefore such expenses of Rs. 7,60,000/- should be disallowed and added to total income of your firm. However, the AO has not properly examined this issue..

3. Therefore, the assessment order passed by the Assessing Officer for A.Y 2017-18 may be prima facie erroneous in so far as it is prejudicial to interests of the revenue. Hence, proceedings u/s 263 of the Act are being initiated with a view to pass a suitable order. Before passing of such order, you are hereby given an opportunity of being heard in the matter."

2. Due to change of incumbent of office, another opportunity of being heard is granted to you by issue of this fresh notice u/s 263 r.w.s. 129 of the I. T. Act.

3. In this connection you are requested to furnish your reply / submission / explanation or objection alongwith supporting evidences, if any, by mail on address id rajkot.cit1@incometax.gov.in / speed post to this office on or before 22-12-2021. Due to pandemic condition, physical presence is not required.

DAMODAR PRASAD GUPTA
PCIT, Rajkot-1

Copy to:

The Addl. CIT Range 2(1),Rajkot
The ACIT Circle 2(1), Rajkot

Page 3 of 4

5. On 3rd August, 2021, the assessee duly replied to the issue involved in the proceeding initiated under Section 263 of the Act by the Ld. PCIT,

appearing at Page Nos. 10 to 14 of the paper book filed before us which is reproduced hereinbelow:

(10)

Date: 03rd August, 2021

From,
Dharati Engineers,
Sardar Nagar, Street No.-1,
Chakkargadh Road,
Amreli
PAN: AADFD8555E

To,
The Principal Commissioner of Income Tax,
PCIT, Rajkot-1

**Sub: Notice for hearing in respect of Revision proceedings u/s
263 of the Income Tax Act, 1961 for the A.Y.2017-18
dated 20/07/2021
DIN & Notice No.: ITBA/REV/F/REV1/2021-22/1034329935(1)**

With reference to the aforesaid subject, we would like to furnish the details as below;

2. With respect to your concern and observation regarding our firm had made payments in cash exceeds Rs.20,000/- in a single voucher aggregating to Rs.7,60,000/- during the Assessment Year 2017-18. The Details of the Firm had made Cash Payments exceeds Rs.20,000/- in a single voucher are as under:

Sr. No.	Voucher No.	Date	Name of the Party	Amount paid in excess of Rs.20,000/-	Remarks
1	110	30-04-2016	Animeshkumar D. Jha	25,000.00	Withdrawal by Partner
2	470	30-06-2016	Animeshkumar D. Jha	25,000.00	Withdrawal by Partner
3	827	30-08-2016	Animeshkumar D. Jha	25,000.00	Withdrawal by Partner
4	839	31-08-2016	Rajesh N. Talaviya	50,000.00	Withdrawal by Partner
5	922	15-09-2016	Rashmiben A. Jha	50,000.00	Withdrawal by Partner

For, Dharti Engineers

(11)

6	1247	31-10-2016	Animeshkumar D. Jha	25,000.00	Withdrawal by Partner
7	1248	31-10-2016	Rajesh N. Talaviya	50,000.00	Withdrawal by Partner
8	1249	31-10-2016	Rashmiben A. Jha	50,000.00	Withdrawal by Partner
9	1250	31-10-2016	Varshaben R. Talaviya	50,000.00	Withdrawal by Partner
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12	1502	31-12-2016	Varshaben R. Talaviya	50,000.00	Withdrawal by Partner
13	1503	31-12-2016	Site Expenses	15,000.00	Salary Exp.
14	1693	31-01-2017	Rashmiben A. Jha	50,000.00	Withdrawal by Partner
15	1877	28-02-2017	Animeshkumar D. Jha	25,000.00	Withdrawal by Partner
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17	1989	15-03-2017	Animeshkumar D. Jha	25,000.00	Withdrawal by Partner
18	1990	15-03-2017	Rashmiben A. Jha	50,000.00	Withdrawal by Partner
19	1991	15-03-2017	Varshaben R. Talaviya	50,000.00	Withdrawal by Partner
20	1992	15-03-2017	Site Supervisor & Engi. Salary	20,000.00	Salary Exp.
				7,60,000.00	

A. As per details mentioned in above tabular form, cash payment made in Sr. No.1 to 12 and 14 to 19 is Withdrawal by Partners of the Firm. A copy of Partners' Capital Account is enclosed herewith for your verification in Annexure A.

➤ According to the Provisions of Section 269ST of the Income Tax Act, 196, "No person shall receive an amount of two lakh rupees or more - (a) in aggregate from a person in a day; or (b) in respect of a single transaction; or (c) in respect of transactions relating to one event or occasion from a person, otherwise than by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account.

➤ Provisions of Section 269ST of the Income Tax Act, 1961 are also applicable on transactions between the firm and its partners.

For, Dharti Engineers

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- Withdrawal of capital by the partner from the firm is related to the receipt by the partner from its firm. In this transaction, Section 269ST is applicable to the partner (who is the recipient) and not to the firm. The provisions of Section 269ST are also applicable to the withdrawal of capital by the partner from the firm.
- **Permissible Limits of Receipts By Cash Etc. Modes** - The restrictions levied in Section 269ST are on the basis of (i) per day per person (ii) per transaction; and (iii) all transactions per event / occasion. All these basis / limits are applicable simultaneously.
 - **Per Day Per Person Limit**: It is self explanatory i.e., wherever Section 269ST is applicable, a partner of the firm can take only up to "less than Rs. 2 lakhs" from the firm in cash etc. modes in a single day. The similar situation will be applicable on receipt by firm from its partner.
 - **Per Transaction Limit** : It is also self explanatory i.e., wherever Section 269ST is applicable a firm can receive amount of only "up to less than Rs. 2 lakhs" from its partner in cash etc. mode in a single transaction (complying with other limits). The similar analogy will also be applicable on receipt by partner from the firm.
 - **All Transactions Per Event / Occasion Limit** : There is no definition of words "event" / "occasion" used in clause (c) of Section 269ST. There is also no clarification from CBDT on this issue. There are also no judicial decisions on this matter. Therefore, in absence of the same the view is prevailing i.e. the meaning of the words "events" / "occasion" should be restricted only to the social, cultural etc. events; and the view is followed then a firm or partner can obtain up to "less than Rs. 2 lakhs" every day from each other in cash etc. mode i.e., for example – up to $Rs.1,99,999 \times 365 = Rs.7,29,99,635/-$.
- Transactions between partner and his Firm - Unlike companies, partnership firms are not considered to have separate legal entities as it is formed by two

For, Dharti Engineers

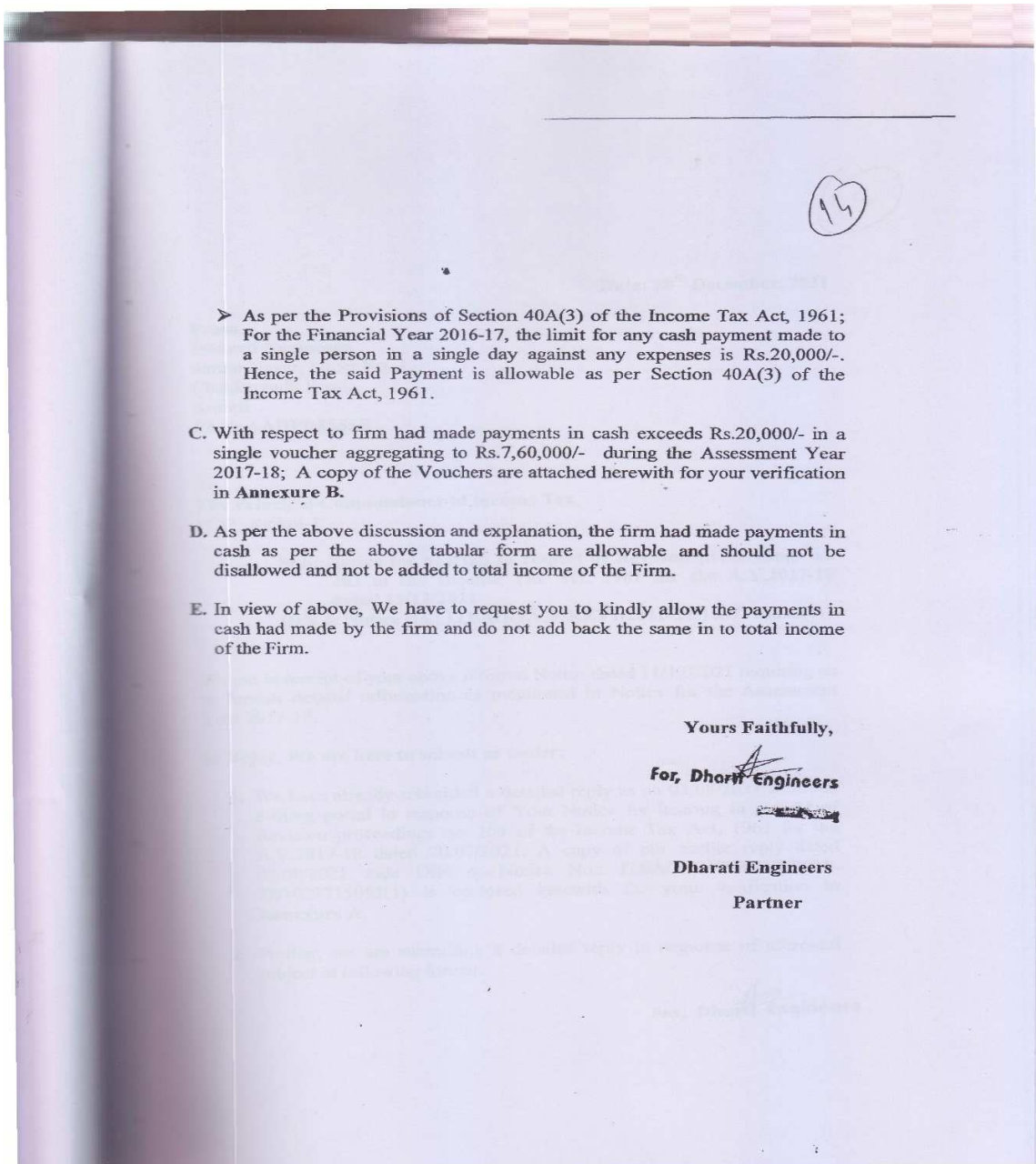
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or more persons who decides to carry on business and share the resultant profits/losses is some agreed ratio.

- The partners are the contributors of capital and provide their own money to the firm. There is no common seal of a partnership firm.
- The status of the partners qua the firm has been summed up by the Supreme Court in the case of CIT vs. R.M. Chidambaram Pillai & Ors (1977) 1 SCC 431 wherein the Hon'ble Court was of the view that a firm is not a legal person even though it has some attributes of the personality.
- According to the honourable court, partnership is a relation between certain persons who agree to share the profits of the business. In Income Tax Law, a firm is a unit of assessment by special provisions but is not a full person.
- Thus, if we follow this view point, the partners cannot be considered as separate and Distinct from their firm and any money provided by them to the firm cannot be taken as an independent transaction of loan under the purview of Section 269SS of the Act. Despite the position as laid down by the Supreme Court, the legal status of a partnership firm vis-à-vis its partners have always been under debate and so is the applicability of Section 269SS or 269T to money advanced by partner to his firm. Relying upon this decision, the High Court of Delhi in the case of CIT vs. Muthoot Financiers ITA No.336, 338, 341 and 345 of 2002 dated 03.02.2015 has held that Section 269SS of the Act would not be violated when money is exchanged inter-se between the partners and the partnership firm. Similar position applies to the receipt and payment of partner's capital by partnership firm as held in the case of ITO vs. Universal Associates ITA No. 1349/Ahd/2010 date 17.06.2011 as partner's capital neither constitutes loan nor deposit.

B. As per above details mentioned in tabular Form, The Cash Payment has been made for Salary Expenses paid to the Engineer and Supervisor of Site as per Sr. No.13 & 20.


For, Dharti Engineers



6. The case of the assessee is this that the cash payment made is nothing but the withdrawal of the partners of the firm and the partners' capital account has also been produced before the Ld. PCIT.

7. The Ld. Counsel Mr. Rindani appearing for the appellant submitted before us that this is nothing but a transaction between the partner and firm.

Unlike companies, partnership firms are not considered to have separate legal entities as it is formed by two or more persons who decides to carry on business and share the resultant profits/losses in some agreed ratio. The partners are the contributors of capital and provide their own money to the firm. There is no common seal of a partnership firm. The status of the partners qua the firm has been summed up by the Supreme Court in the case of CIT vs. R.M. Chidambaram Pillai & Ors. (1977) 1 SCC 431 wherein the Hon'ble Court was of the view that a firm is not legal person even though it has some attributes of the personality. According to the Hon'ble Court, partnership is a relation between certain persons who agree to share the profits of the business. In Income Tax Law, a firm is a unit of assessment by special provisions but is not a full person. Thus, the partners cannot be considered as separate and distinct from their firm and any money provided by them to the firm cannot be taken as an independent transaction of loan under the purview of Section 269SS of the Act. Despite the position as laid down by the Supreme Court, the legal status of a partnership firm vis-à-vis its partners have always been under debate and so is the applicability of Section 269SS or 269T to money advanced by partner to his firm relying upon this decision, the High Court of Delhi in the case of CIT vs. Muthoot Financiers ITA No.336, 338, 341 and 345 of 2002 dated 03.02.2015 has held that Section 269SS of the Act would not be violated when money is exchanged inter-se between the partners and the partnership firm. Similar position applies to the receipt and payment of partner's capital by partnership firm as held in the case of ITO vs. Universal Associates ITA No. 1349/Ahd/2010 date 17.06.2011 as partner's capital neither constitutes loan nor deposit. Finally in terms of provision of Section 40A(3) of the Act for F.Y. 2016-17, the limit for cash payment made to a single person in a single day against another expenses is Rs.20,000/- and in

that view of the matter, the payment is allowable as per Section 40A(3) of the Act. The firm had made payment in cash in a single voucher aggregating to Rs.7,60,000/- during A.Y. 2017-18 and the same should not be disallowed and not be added to the total income of the firm as also the main argument advanced by the Ld. Senior Counsel Shri D. M. Rindani appearing for the assessee before us. In fact, he has drawn our attention to the ledger account of each of the partners of the firm. The payment voucher made to those partners annexed to the paper book appearing from Page Nos. 21 to 44 of the same. He has further drawn our attention to the query made by the Ld. ACIT, Circle-3(1), Rajkot to the assessee dated 26.07.2019 i.e. during the course of assessment proceeding, wherein all the financial details, particularly, the details of partners of the firm including the remuneration paid to them for A.Y. 2017-18, the rate of interest and interest paid for A.Y. 2017-18 were directed to be provided. Needless to mention, the assessee provided the entire details to the Ld. AO during the course of assessment proceeding including the ledger of cash book alongwith narration for the period 01.04.2016 to 31.03.2017. The same has also been annexed to the paper book. It, therefore, appears that the impugned payment being the withdrawal by the partner from the firm has duly been considered by the Ld. AO during the course of assessment proceeding and only upon due application of mind, the same has been not disputed.

8. On the other hand, Ld. DR relied upon the order passed by the Ld. PCIT holding the order passed by the Ld. AO dated 10.12.2019 under Section 142(3) of the Act erroneous and prejudicial to the interest of the Revenue.

9. Upon considering the documents annexed to the paper book as indicated in the foregoing paragraph, we find substance in such arguments made by the Ld. DR. Furthermore, it is a settled principle that the capital cannot be attributable as expenses and in the instant case part of the old capital had been withdrawn by the partners of the firm, which is not liable to be subjected to the provisions of Section 40A(3) of the Act. Moreso, when the entire materials were placed before the Ld. AO during the course of assessment proceeding and only upon verification of the same, the return of income was accepted, which is also reflecting from the order passed by the Ld. AO mentioned in paragraph 2 therein, in our considered opinion, assessment cannot be reopened by exercising power conferred under Section 263 of the Act by the Ld. PCIT in the manner it has been done.

10. We find that the issue raised by the Ld. PCIT was already adjudicated upon due application of mind by the Ld. AO in the assessment proceedings under Section 143(3) of the act and return was accepted. The copy of the partners' capital account, payment vouchers made to the partners, the ledger of cash book alongwith narration for the period 01/04/2016 to 31/03/2017 were duly placed before the Ld. AO during the original assessment proceeding and only upon verification of the same, the assessment was finalized. It is relevant to mention that the Ld. PCIT referred Explanation (2) to Section 263(1) of the Act while holding the order of assessment erroneous and prejudicial to the interest of the Revenue and exercising power in passing direction for re-assessment by the Ld. AO which in our considered opinion is not having any manner of application as the examination and/or verification of the issue involved in the PCIT's order were duly been made by the Ld. AO which is also reflected in the order so passed by the Ld. AO at Paragraph Nos.

2 & 3 therein. Thus, after considering the entire gamut of the matter, the prima facie finding made by the Ld. PCIT holding the order passed by the Id. AO dated 10.12.2019 is erroneous and prejudicial to the interest of the Revenue, in our considered opinion, is found to be wrong and direction for re-assessment by the Ld. AO is, thus, found to be not sustainable. The entire proceeding is, thus, void ab initio and quashed.

11. In the result, assessee's appeal is allowed.

This Order pronounced on 29/08/2023

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Ahmedabad; Dated 29/08/2023
S. K. SINHA

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

True Copy

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

By order/आदेश से,

Deputy/Asstt. Registrar
ITAT, Rajkot