

IN THE INCOME TAX APPELLATE TRIBUNAL  
SMC BENCH, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

आयकर अपील सं. /ITA No.878/PUN/2023

निर्धारण वर्ष / Assessment Year : 2012-13

Pandhrinath Jagannath Nere, 13-14, Balaji Vihar Apartment, Ashok Stambh, Nashik – 422 001, Maharashtra PAN : ACVPN7479B	Vs.	The ITO, Ward-2(3), Nashik
Appellant		Respondent

Assessee by Shri Pramod S.Shingte  
Revenue by Smt. Neha Deshpande

Date of hearing 13-10-2023  
Date of pronouncement 13-10-2023

आदेश / ORDER

PER R.S. SYAL, VP:

This appeal by the assessee arises out of the order dated 15-06-2023 passed by the CIT(A) in National Faceless Appeal Centre (NFAC), Delhi u/s.250 of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2012-13.

2. The only issue pressed in this appeal is against the confirmation of addition of Rs.15.00 lakh made by the Assessing Officer (AO) u/s.40A(3) of the Act.

3. Briefly stated, the facts of the case are that the assessee purchased certain immovable property on 14-03-2012 for a sum of Rs.51.00 lakh which was admittedly its stock in trade. Out of this,

an amount of Rs.36.00 lakh was paid through cheques and the remaining amount of Rs.15.00 lakh was paid in 3 installments of Rs.5.00 lakh each on 20-11-2011, 27-11-2011 and 11-12-2011. On being called upon to explain as to why the disallowance of Rs.15.00 lakh be not made u/s.40A(3), the assessee submitted that the above payments were made at the insistence of the sellers and were made on Sundays, being closed holidays. The AO held that the assessee could not bring any extraordinary circumstances for making the payments in cash and as a consequence thereof made the addition of Rs.15.00 lakh u/s.40A(3) of the Act. The Id. CIT(A) confirmed the same.

4. Having heard both the sides and perusing the relevant material on record, it is seen that there is no dispute on the fact that the assessee made payment of Rs.51.00 lakh for the land held as stock-in-trade, out of which a sum of Rs.15.00 lakh was paid in cash on 3 different days at Rs.5.00 lakh each. Such dates have been accepted to be closed bank holidays. In support of the contention that the seller namely, Shri Ganpat Murlidhar Hedge, insisted on making payment in cash, the assessee furnished an affidavit of Shri Ganpat Murlidhar Hedge emphasizing that he was in need of money and since the bank was closed on the above dates he insisted on cash

payment. Further, a threat was also given that if the amount was not paid the agreement of sale would be cancelled. The contents of the affidavit have not been controverted by the AO. These facts indicate that the assessee made payments to the sellers in cash in violation of section 40A(3) of the Act on 3 bank holidays. Rule 6DD(j) contains exceptions to the applicability of section 40A(3). Clause (j) of Rule 6DD, which was prevalent at the material time and omitted by the income-tax (3<sup>rd</sup> Amendment) Rules, 2020 w.e.f. 29-01-2020, provided that no disallowance will be made where the payment was required to be made on a date on which the banks were closed on account of holiday or strike. The assessment year under consideration is 2012-13 and at the material time clause (j) of Rule 6DD was very much part of the Rule. Since the assessee admittedly paid cash for a sum exceeding Rs.10,000/- on 3 dates on which the banks were closed, there can be no question of making any disallowance u/s.40A(3) of the Act. I, therefore, order to delete the addition.

5. The second ground against the applicability of section 45(2) on conversion of capital asset into stock in trade and the consequential revision of total income was not pressed by the Id. AR. The same, therefore, stands dismissed.

6. In the result, the appeal is partly allowed.

Order pronounced in the Open Court on 13<sup>th</sup> October, 2023.

Sd/-  
(R.S.SYAL)  
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 13<sup>th</sup> October, 2023

Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The Pr.CIT concerned
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,  
SMC, Pune / DR, ITAT, Pune
5. गार्ड फाईल / Guard file

**आदेशानुसार/ BY ORDER,**

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	13-10-2023	Sr.PS
2.	Draft placed before author	13-10-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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