

आयकर अपीलिय अधिकरण, राजकोट न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT
(Conducted through E-Court)**

**BEFORE Ms SUCHITRA KAMBLE, JUDICIAL MEMBER
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकरअपीलसं./ITA No. 225/Rjt/2022
निर्धारणवर्ष/Asstt. Year:2014-2015

Shamjibhai Jivabhai Balasara, 1/1, Yadunandan Chambers, Opp. Bus Station, Junavas, Madhapar, Bhuj-370020. PAN: AKYPB5201A	Vs.	I.T.O, Ward-1, Bhuj.
(Applicant)		(Respondent)

Assessee by :	Shri D.M Rindani, with Ms Devina Patel, A.Rs
Revenue by :	Shri Ashish Kumar Pandey, Sr. DR

सुनवाईकीतारीख/**Date of Hearing** : **26/09/2023**

घोषणाकीतारीख/**Date of Pronouncement**: **08/12/2023**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the assessee against the order of the Ld. Commissioner of Income Tax, (Appeals)-7, Ahmedabad arising in the matter of order passed under section 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2013-14.

2. The only issue raised by the assessee is that the Ld. CIT(A) erred in confirming the addition made by the AO for Rs. 11,75,720/- on account of cash payment in violation of the provisions of section 40A(3) of the Act.

3. Briefly stated facts are that the assessee in the present case, an individual, is engaged in the business of developing land and construction of houses. The assessee in the year under consideration has acquired 5 pieces of land against the cash payment amounting to Rs. 11,75,720/- only. As per the AO, the cash payment against the purchase of land/plot, debited in the profit and loss accounts, is in violation of the provision of section 40A(3) of the Act and therefore he added the same to the total income of the assessee.

4. Aggrieved assessee preferred an appeal to the Ld. CIT(A), who has confirmed the order of the AO.

5. Being aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

6. The Ld. AR before us filed a paper book running from pages 1 to 21 and submitted that the payment in cash was made by the assessee out of the withdrawal from the bank. Similarly, the cash payment was duly recorded in the conveyance deed. All the sellers have given confirmations stating that they insisted the assessee for cash payment. Thus, the Ld. AR contended that genuineness of the transaction for the purchase of land is beyond doubt. Likewise, the cash payment was made at the instant of the vendor and therefore commercial expediency also gets established. Therefore, it was prayed to the Ld. CIT(A) that the amount of land purchased should be allowed as deduction.

7. On the other hand, the Ld. DR submitted that the assessee is a trader in land activities, and he has purchased five pieces of plot against the cash payment in the year under consideration which evidences that the assessee is habitual

defaulter. As per the Ld. DR, the case of the assessee also does not fall under any of the exception provided under Rule 6DD of Income Tax Rules. The Ld. DR vehemently supported the order of the authorities below.

8. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that there is no doubt as far as genuineness of the transaction is concerned. There was a withdrawal from the bank account of the assessee, cash payment was duly recorded in the books and vendors of land have also confirmed to have received cash from the assessee. Accordingly, we hold that there is no IOTA of doubt as far as genuineness of transaction is confirmed.

9.1 Regarding the business expediency, we note that all the vendors of the plots have stated in their confirmation, place on page 10 to 17, that they insisted for cash payment. Thus, in such a situation, we are of the view that the assessee to carry its business activities had to make cash payment. Accordingly, we feel that in the impugned land transaction deals, the commercial expediency is also getting established. The Jaipur Tribunal in the case of Vijayeta Buildcon pvt. Ltd v/s ACIT reported in 123 taxmann 133 has observed as under:

29. In the instant case, we find that the identity of the persons from whom the purchase of various land parcels have been made by the assessee has been established and 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. The genuineness of the transaction has been established as evidenced by registered sale deeds wherein the payments through cheque as well as cash has been duly mentioned and lastly, the test of business expediency has been met as the initial payments as insisted by the sellers most of whom are farmers have been made in cash to secure the transaction. 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 for which section 40A(3) has been brought on the statute books and which has been satisfied in the instant case. Similar view has been taken by the Hon'ble Rajasthan High Court in case of CIT v. Solution [\[2017\] 80 taxmann.com 246/\[2016\] 382 ITR 337](#) wherein it was held as under:

'11. The Appellate Authorities have relied upon the judgment rendered in the case of Attar Singh Gurmukh Singh v. ITO [1991] 191 ITR 667/59 Taxman 11 (SC), where the hon'ble apex court has observed as under (page 673) :

"The terms of section 40A(3) are not absolute. Consideration 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 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 business transactions and to prevent the use of unaccounted money or reduce the chances to use black money for business transactions."

12. The aforesaid observation does apply in the instant case. The Assessing Officer on the facts noticed has been unable to make out a case of involvement of unaccounted money.

13. It is also a finding of fact recorded by the Commissioner of Income-tax (Appeals) that copies of the ledger accounts were produced before the Assessing Officer who has not found any discrepancy in such books of account and no unaccounted transaction has been reported/noticed by the Assessing Officer.'

30. In the entirety of facts and circumstances of the case and respectfully following the legal proposition laid down by the various Courts including that of the Jurisdictional High Court and the Coordinate Benches referred supra, no disallowance is called for under section 40A(3) of the Act and the same is directed to be deleted. In the result, the ground of the assessee's appeal is allowed.

9.2 In view of the above, we are of the view that the legitimate deduction available to the assessee cannot be denied in the given facts and circumstances. Accordingly, we set aside the findings of the Ld. CIT(A) and direct the AO to delete the addition made by him. Hence, the ground of appeal of the assessee is hereby allowed.

10. In the result, the appeal filed by the assessee is hereby allowed.

Order pronounced in the Court on 08/12/2023 at Ahmedabad.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

(True Copy)

Ahmedabad; Dated 08/12/2023

Manish, Sr. PS