

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI "E" BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA No.3124/Del/2019  
[Assessment Year : 2007-08]**

Murshid Ahmed, J-100, Ashok Chowk, Adarsh Nagar, Jaipur, Rajasthan-302004. <b>PAN-AAGPA2309E</b>	vs	ITO, Ward-1(5), Faridabad, Haryana.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>		Shri Rakesh Jain, Adv.
<b>Respondent by</b>		Shri Anuj Garg, Sr. DR
<b>Date of Hearing</b>		21.03.2024
<b>Date of Pronouncement</b>		18.04.2024

**ORDER**

**PER KUL BHARAT, JM**

The present appeal filed by the assessee is directed against the order passed by Ld. CIT(A), Faridabad dated 31.01.2019 for the assessment year 2007-08. The assessee has raised following grounds of appeal:-

1. *"In the facts and circumstances of the case and in law, the Id. CIT(A) has grossly erred in confirming the action of ld. AO in disallowing the claim of expenditure of Rs. 53,69,758/- by applying section 40A(3) of Income Tax Act, 1961. The action of the ld. CIT (A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please may be granted by deleting the entire addition Rs. 53,69,758/- under section 40A (3) imposed under section 40A(3).*
2. *That the Ld CIT (A) has erred in confirming the addition by ignoring the fact that 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.*
3. *That on the facts and circumstances of the case Ld CIT(A) was not justified in confirming addition of Rs. 53,69,758/- u/s 40A(3) without*

*properly appreciating the nature of the transaction and the intent behind and object of the section 40A(3) of the Income Tax Act, 1961.*

4. *That the Ld CIT (A) has failed to understand that the provisions of section 40A (3) are not intended to restrict the business activities but to caution that payments exceeding Rs.20,000/- are made in cheque/draft. The provisions of section 40A (3) of the Act are to be in consonance with business expediency trade practice and other genuine relevant factors. In this present case, the appellant has intimated the circumstances under which the appellant was compelled to make the cash payments and also the genuineness of payment and the identity of the payee is not doubted.*
5. *That the appellant craves the leave to add a mend, modify, delete any of the grounds of appeal before or at the time of hearing and each ground is independent and without prejudice to each other.”*

2. The only effective ground raised in this appeal is against the sustaining of addition made by the Assessing Officer by invoking the provision of section 40A(3) of the Income Tax Act, 1961 (“the Act”).

3. Facts giving rise to the present appeal are that original return was completed u/s 143(3) r.w.s. 147 of the Act, computed income of the assessee at INR 31,24,090/- against the returned income of INR 28,99,960/-. Thereafter, the assessment was revised by Ld. Pr. CIT, Faridabad u/s 263 of the Act on 24.03.2017 and the assessment was restored to the Assessing Authority. The Assessing Authority in pursuance to the direction of Ld.CIT, passed assessment order dated 08.12.2017 thereby, he made addition of INR 53,69,758/- and assessed the income of the assessee at INR 84,93,848/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, sustained the addition and dismissed the appeal of the assessee.

5. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before this Tribunal.

6. At the outset, Ld. Counsel for the assessee submitted that the authorities below did not appreciate the facts in right perspective. The assessee made payments to the land owners. He further submitted that even otherwise also that the entire disallowance of expenditure is contrary to the provisions of law. He submitted that the assessment year involved in this appeal is 2007-08. He drew our attention to the Finance Act, 2007 to buttress the contention that the entire expenditure could not have been disallowed as there was an amendment by the Finance Act, 2007 in section 40A(3) of the Act. He contended that prior to amendment, only 20% of the expenditure could be disallowed. The amended provision would not be applicable in the year under consideration. In support of his contention, Ld. Counsel for the assessee has placed reliance on the following CBDT Circular and case laws:-

1. *“Expenses or payments not deductible in certain circumstances u/s 40A(3) of the Income Tax Act, 1961 (Finance Act, 2007);*
2. *Hon'ble ITAT Delhi Bench C in the case of M/s Geo Connect Ltd. Vs. DCIT, New Delhi in ITA No. 2896 of 2018 vide order dated 29.08.2022;*
3. *Attar Singh Gurmukh Singh Etc. Vs. Income Tax Officer (1991) 191 ITR 0667 SC;*
4. *Anupam Tele Services Vs. Income Tax Officer (2014) 366 ITR 122 (Guj);*

5. *A Daga Royal Arts Vs. Income Tax Officer (2018) 53 CCH 0086 Jaipur Trib;*
6. *Nobel Advertisers Pvt. Ltd. Vs. DCIT (2022) 65 CCH 0002 Del Trib;*
7. *Ranbaxy Laboratories Ltd. Vs. CIT (2011) 336 ITR 0136 Del HC; and*
8. *Naresh Kumar Garg Prop. Garg Electricals Vs. ACIT (2019) 57 CCH 0363 Del Trib.”*

7. On the other hand, Ld. Sr. DR for the Revenue opposed these submissions and supported the orders of the authorities below. He contended that the assessee has not placed any contrary material in support of his contention that the owners of land had insisted for cash payments. In the absence of such material, the submission of the assessee is merely bald assertion. The case laws as relied by the Ld. Counsel for the assessee, are not applicable on the facts of the present case. The assessee has neither proved business expediency nor any compelling circumstances. Moreover, the assessee has not placed any material suggesting that on the date of payment, there was banking holiday and/or no banking facility was available where the cash payment was made by the assessee. Thus, he submitted that no case is made out by the assessee for interfering in the finding of the lower authorities.

8. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. Undisputedly, the assessee has claimed to be in the business of sale and purchase of lands. The assessee has made payments to the land owners exceeding INR 20,000/-. Thus, *ex-facie* such act of the assessee is in contravention to the provision of section 40A(3) of the Act. The assessee has not taken any plea that his case falls into exceptions as prescribed under Rule 6DD of

the Income Tax Rules, 1962 (“the Rules”). For the sake of clarity, section 40A(3) of the Act is reproduced 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, or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, exceeds ten thousand rupees, no deduction shall be allowed in respect of such expenditure.*

*(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, or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed<sup>46</sup>, 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 ten 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, or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed<sup>47</sup>, exceeds ten thousand rupees, in such cases and under such circumstances as may be prescribed<sup>48</sup>, 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 "ten thousand rupees", the words "thirty-five thousand rupees" had been substituted."*

9. The aforesaid provision was amended w.e.f. 01.04.2008. Prior to amendment, the provision of section 40A(3) of the Act reads as under:-

**40A(3).** *"Where the assessee incurs any expenditure in respect of which payment is made, after such date (not being later than the 31<sup>st</sup> day of March, 1969) as may be specified in this behalf by the Central Government by notification in the Official Gazette, in a sum exceeding [twenty] thousand rupees otherwise than by an account payee cheque drawn on a bank or account payee bank draft], twenty per cent of such expenditure shall not be allowed as a deduction:*

**Provided** *that where an allowance has been made in the assessment for any year not being an assessment year commencing prior to the 1<sup>st</sup> day of April 1969, in respect of any liability incurred by the assessee for any expenditure and subsequently during any previous year the assessee makes any payment in respect thereof in a sum exceeding [twenty] thousand rupees otherwise than by [an account payee cheque drawn on a bank or account payee bank draft], the allowance originally made shall be deemed to have been wrongly made and the Assessing Officer may recompute the total income of the assessee for the previous year in which such liability was incurred and make the necessary amendment, and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the end of the assessment year next following the previous year in which the payment was so made:*

**Provided** *further that no disallowance under this sub-sections shall be made where any payment in a sum exceeding [twenty] thousand rupees is made otherwise than by [an account payee cheque drawn on bank or account payee bank draft], 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]."*

10. From a bare reading of the above provision, it is clear that only 20% of the expenditure would be disallowed in the event of any payment of such expenditure made in cash which exceeded INR 20,000/-. The contention of the assessee is that the payments were made out of business expediency, is not supported by any evidences. Therefore, the case laws relied by the Ld. Counsel for the assessee, do not help him under the facts of the present case. However, we are in agreement with Ld. Counsel for the assessee that the expenditure should have been restricted to the extent of 20% in terms of extant provision of section 40A(3) of the Act. We therefore, direct the AO to restrict the disallowance to the extent of 20% of the total expenditure which was incurred in cash and exceeded the prescribed monetary limit i.e. INR 20,000/- of the same. Grounds raised by the assessee are accordingly, partly allowed.

11. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 18<sup>th</sup> April, 2024.

***Sd/-***

**(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER**

***Sd/-***

**(KUL BHARAT)  
JUDICIAL MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI