

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

**BEFORE
SHRI S RIFAUZ RAHMAN, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 3321/Del/2023
Asstt. Year: 2017-18

ITO Ward 3, Panipat	Vs.	Narender Singh 217, New Shanti Nagar, Panipat, Haryana 132103 PAN BOKPS2460F
(Appellant)		(Respondent)

Assessee by:	Shri Amit Kaushik, Advocate
Department by:	Shri Anshul, Sr. DR
Date of Hearing:	04.06.2024
Date of pronouncement:	20.06.2024

ORDER

PER VIMAL KUMAR, JM

The Revenue department's appeal is against order dated 29.09.2023 of the Learned Commissioner of Income Tax (Appeals) [hereinafter referred as "Ld. CIT(A)"] through which appeal of assessee was partly allowed and assessment order dated 24.12.2019 of Learned Income Tax Officer ("Learned AO") making addition of Rs. 2,69,47,764/- was ordered to be deleted and disallowance of Rs. 5,96,019/- was upheld.

2. Brief facts of the case are that assessee e-filed return of income for the assessment year 2017-18 declaring taxable income of Rs. 2,99,620/- including income under the head Business and profession at Rs. 4,71,620/- and claimed deduction of Rs. 1,72,000/-. The case was selected for complete scrutiny through CASS. Notice under section 143(2) of the Income Tax Act, 1961 (hereinafter referred as "the Act") was issued on 24.09.2018 and the assessment proceedings were conducted through 'E-proceeding' facility. Assessee was engaged in trading and distribution of milk in the name and style of M/s. Narender Milk Sale Agency. The assessee is distributor of Vita Milk. The main criterion for selection of the case in scrutiny was cash deposited during demonetization period. Statutory notice under section 142(1) of the Act along with detailed questionnaire was issued to the assessee. Assessee submitted that deposit was out of regular sale proceeds from various small retailers. Assessee has deposited the cash in the bank account which was transferred to the account of company i.e. Hisar Jind Co-Op. Milk Producers Union Ltd. On perusal of bank statement it was noticed that there were debit entries to the tune of Rs. 3,45,37,546/-. However the assessee showed purchase at Rs. 6,14,83,310/-. Assessee was required to furnish the source and mode of balance payment of Rs. 2,69,47,764/- with documentary evidence and furnish details of party-wise purchases made by him along with confirmed copies of account vide notice issued under section 142(1) on 15.12.2019 for 20.12.2019 but no response was received. Assessee had debited huge expenses of Rs. 5,96,019/- in his profit and loss account but no reply was

filed by the assessee. As such a lumpsum disallowance @ 10% for the expenses was made.

3. Assessee filed appeal before the Learned CIT(A). Learned CIT(A) vide order dated 29.09.2023 partly allowed appeal in above terms.

4. Being aggrieved, department of revenue preferred present appeal.

5. Learned authorized representative for department of revenue submitted that Learned CIT(A) erred in deleting the addition of Rs. 2,69,47,764/- made on account of disallowance of expenditure in cash in violation of section 40A(3) of the Act by ignoring the fact that the AO had rightly made the addition on the facts having sufficient reasons and material available on record. So appeal may be accepted.

6. Learned authorized representative for assessee submitted that assessee is milk distributor and sales were carried out through the sub-distributors. The assessee received the milk products from a main supplier Hisar Jind Co-Op. Milk society Ltd. The mode of collection against the sale of milk is in cash. The cash collections are deposited in assessee's bank account and the amount was paid to company through banking channel. The payments were verifiable against the sale receipt shown in the accounts of assessee. Hon'ble ITAT, Bangalore Bench in the case of Sri Renukeswara Rice Mills vs ITO I.T. Appeal No. 1102

(Bangalore) of 2002 decided on 27.08.2004 reported as [2005] 93 ITD 263 in para 6 and 7 held that

“6. We have carefully considered rival submissions and relevant facts of the case. Hon'ble Supreme Court while, interpreting the provision of Section 40A(3) in the case of Attar Singh Gurmukh Singh v. ITO 191 ITR 667 at page 672 and 673 held thus

"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 dear 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 undisclosed sources. The terms of Section 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 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 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 un-accounted money or reduce the chances to use black money for business transactions. (See Mudiam Oil Company v. ITO [1973] 92 ITR 519 (AP). If the payment is made by a crossed cheque drawn on a bank or 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." (emphasis supplied)

The Hon'ble Supreme Court noted that the intention to make payment by crossed cheque or crossed DD is to enable the assessing authority to ascertain that the payment is genuine and not out of the undisclosed source. It is also noted that Section 40A(3) is intended to regulate business transactions and to prevent the use

of un-accounted monies or to reduce the chances of use of block money for business transactions. In the present case, it is seen that the assessee for purchase of rice, paid the amount directly to the bank account of the payee. The effect of issue of crossed cheque/DD is that the payee named therein receives the payment through banking channels. The purpose is dual. In the first instance it is to see that the payee and payee alone receives the payment and to ensure that the payment is routed through bank channel so as to trace the origin and conclusion of the transaction. In the case before us, it is seen that instead of issuing cheque/DD the assessee prepared a challan and along with the cash the challan was presented to the bank of the payee for the credit of the same in the account of payee. In the result it is ensured that the payee and payee alone receives the payment and the origin and conclusion of transaction is traceable. Thus payment of sum directly in the bank account of payee fulfils the criteria for ensuring the object of introduction of Section 40A(3). This is not a direct payment to the payee but only to the credit of this bank account without the payee actually receiving the cash. We accordingly hold that such payment is not in violation of provision of Section 40A(3) and hence no disallowance is called for.

7. It is seen that the payment is made for purchase of agricultural produce. The payment is made to the agent operating at the market yard. As per the regulation of trade in agricultural produce, market yards are set up and the State RMC Act also regulates such business. Thus for purchase and sale of agricultural produce, the transaction can be only through dealers and agents licensed to operate in the market yard. Thus, the person operating there, is not only the agent of the cultivator or grower but also of the persons purchasing the agricultural produce. Clause (f) of Rule 6DD provides that where the payment is made for the purchase of agricultural produce to the cultivator, Section 40A(3) will not apply. Similarly, Clause (1) of Rule 6 DD provides that where the payment is made by any person to his agent who is required to make payment in cash for goods, Section 40A(3) will not apply. Since the assessee has paid the sum to his agent who is the payee in the present case, and who in his turn is required to make payment to the cultivator, indirectly, the assessee has paid for the purchase of agricultural produce to the cultivator through the agent. Thus, a combined reading of Clauses (f) and (1) of Rule 6DD will take away the transaction from the clutches of Section 40A(3). From the bills produced by the assessee to the assessing officer it was submitted that the assessee apart from paying price of the products also pays commission to the payee. Thus, the payee has become the agent of assessee also. Such agent is required to pay the cultivator in cash. Accordingly, there is no violation of Section 40A(3). We accordingly delete the disallowance of Rs. 2,04,000/- in respect of payment made to KP.”

7. Learned authorized representative for assessee submitted that Hon’ble ITAT Delhi in IT Appeal No. 4111(Delhi) of 2015

decided on 9.12.2020 titled as “ITO vs. Suresh Kumar” reported as [2021] 124 Taxmann.com 563 held that

“where assessee, running a travel agency, made payments in cash in excess of Rs. 20,000 to two entities on account of purchase of flight tickets for his clients, since genuineness of said transactions of payments was not disbelieved by revenue and assessee made out a case of business contingency, impugned payment could not be disallowed under section 40A(3).”

8. From examination of record in light of aforesaid rival submissions it is crystal clear that the assessee is a milk distributor and sales were carried out through the sub-distributors. The assessee received the milk products from a main supplier, Hisar Jind Co-Op. Milk Producers Union Ltd. The mode of collection against the sale of milk was in cash and the cash was paid through banking channel. Account statements show turnover was very high, the margins were very low in the business of milk distribution. As per ratio of judgments in Sri Renukeswara Rice Mills vs ITO and ITO vs. Suresh Kumar’s cases (supra) it is well settled that since assessee paid amounts to others which could be verified a combined reading of Clauses (f) and (1) of Rule 6DD will take away the transaction from the clutches of Section 40A(3). From the bills produced by the assessee before the assessing officer it is evident that the assessee apart from paying price of the products also paid commission to the payee. Thus, the payee has become the agent of assessee also. Such agent is required to pay the company in cash. Accordingly, there is no violation of Section 40A(3). We

accordingly uphold deletion of the disallowance of Rs. 2,69,47,764/- in respect of payment made to the company.

9. In view of above material facts and well settled principle of law the arguments of authorized representative for the department being devoid of merits are untenable.

10. No other point was argued.

11. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 20th June, 2024.

sd/-

**(S RIFAUZ RAHMAN)
ACCOUNTANT MEMBER**

Dated: 20/06/2024

Veena

sd/-

**(VIMAL KUMAR)
JUDICIAL MEMBER**

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
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