

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 550/Ind/2023
(Assessment Year: 2018-19)

Mudit Kumar Bajaj, 15-D Industrial Area Maxi Road, Ujjain	vs.	CPC, Income Tax Department, Bengaluru
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AEZPB2621P		
Assessee by	Ms. Nupur Ladha & Shri Vaibhav Siroliya, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	13.06.2024	
Date of Pronouncement	18.06.2024	

ORDER

Per Vijay Pal Rao, JM :

This appeal by the assessee is directed against order dated 10.10.2023 of Commissioner of Income Tax (Appeal), National Faceless Appeal Centre, Delhi for the Assessment Year 2018-19.

2. There is a delay of 14 days in filing the appeal. The assessee has filed an application for condonation of delay which is supported

by affidavit of the assessee. We have heard the Ld. AR as well as Ld. DR on condonation of the delay. The Ld. AR has submitted that after receiving the impugned order through email the assessee was out of station during the period 7.12.2023 to 21.12.2023 and therefore, the appeal could not be filed within the period of limitation expired on 9.12.2023 and the same was filed only on 23.12.2023. Thus Ld. AR has submitted that the delay in filing the appeal is neither intentional nor bonafide due to the reasons beyond the control of the assessee as the assessee was out of station and could not take steps to file the appeal within the period of limitation. Hence, he has pleaded that the delay in filing the appeal may be condoned and the appeal of the assessee be admitted for deciding on merits. On the other hand Ld. DR raised no objection if the delay of 14 days in filing the present appeal.

3. Having considered the rival submissions as well as gone through the averments made by the assessee in the affidavit we are satisfied that the assessee had a reasonable cause for delay of 14 days in filing the present appeal. Accordingly in the facts and

circumstances of the case and in the interest of justice the delay of 14 days in filing the appeal is condoned.

4. The assessee has raised following grounds of appeals.

"1. The Id. Commissioner of Income Tax (Appeals) erred in confirming disallowance made by CPC,IT Department Bengaluru vide order passed u/s 154 without providing any opportunity to object the proposed rectification on account of cash payments to MPPKVVCL (a government agency for Power Distribution) and which providing were not in violation of Rule 6DD.

2. The Id. Commissioner of Income Tax (Appeals) erred in not accepting the contention that on debatable issue no adjustment can be made u/s 143(1)(a) 154 of the Income Tax Act, 1961

3. That the appellant reserve his right to add, leave, alter, amend or modify all or any of the grounds of appeal on or before the hearing."

5. The solitary issue raised by the assessee in this appeal is whether in the facts and circumstances of the case CIT(A) erred in confirming the disallowance made by the CPC u/s 40A(3) on account of cash payment of electricity bills issued by Madhya Pradesh Paschim Kshetra Vidyut Vidaran Company Limited (hereinafter referred as MPPKVVCL).

6. The Ld.AR has submitted that during the year under consideration the assessee has paid electricity bills to MPPKVVCL

which is a payment made to the government as the said MPPKVVCL is wholly owned company of Madhya Pradesh Government incorporated by the Government vide order dated 01.07.2002 and therefore, the said payment falls in the exceptions provided in Rule 6DD being the payment made to the government. Ld. AR has referred to the details of the payments of electricity bills as well as relevant copies of the electricity bills placed in the paper book and submitted that there is no dispute that the payment made by the assessee in question towards the electricity bills against the electricity consumption. During the year some of the payments were made through cheque and some other were paid in cash. Ld. AR has relied upon the judgment of Hon'ble Andhra Pradesh High Court in the case of **Mudiam Oil Co. V ITO (1973) 92 ITR 519 (AP)** and submitted that Hon'ble High court has held that Section 40A(3) must not be read in isolation or to the exclusion of Rule 6DD. The Hon'ble High Court has observed that while reading all these provisions makes it clear that the provisions are not intended to restrict the business activities. Thus the Hon'ble High Court has held that the object of requirement of payment through crossed cheque or crossed bank draft is to enable the

assessing authority to ascertain whether the payment was genuine or whether it was out of the income from disclosed sources. The Ld. AR then relied upon the judgment of Hon'ble Rajasthan High Court in case of **Fakri Automobiles v CIT 160 ITR 504** wherein a similar view is taken which has been upheld by the Hon'ble Supreme Court. Therefore, when the payment is genuine and made to a government company the same cannot be disallowed u/s 40A(3) of the Act. Ld. AR then relied upon the order of the **Kolkata Bench of ITAT in the case of Narayan Rice Mill Vs. CIT ITA No.732/Kol/2015** and submitted that when the genuineness of the payment is not doubted and identity of recipient is not in dispute then the payment made to the electricity distribution company which a government undertaking cannot be disallowed. On the other hand Ld. DR supported the impugned order of CIT(A).

7. We have considered rival submissions as well as relevant material on record. The CPC has made the disallowance on account of cash payment of electricity bills while passing the rectification order u/s 154 of the Act on 30.06.2019. The assessee challenged this action of the CPC before CIT(A) and contended that the

payment in question is made towards electricity bills issued by MPPKVVCL for the consumption of the electricity by the assessee therefore, the expenses are genuine and payment are made to the government body. The details of payments of electricity bills are given by the CIT(A) at page 6 to 8 are as under:

<i>S.No</i>	<i>Month</i>	<i>Unit Reading</i>	<i>Consumption</i>	<i>Bill Amount</i>	<i>Mode of payment</i>
	<i>Consumer No. 7953474111</i>				
<i>1</i>	<i>April-17</i>	<i>140875</i>	<i>5195</i>	<i>28151</i>	<i>Cash</i>
<i>2</i>	<i>May-17</i>	<i>151949</i>	<i>11074</i>	<i>80928</i>	<i>Cash</i>
<i>3</i>	<i>June-17</i>	<i>162512</i>	<i>10563</i>	<i>78058</i>	<i>Cash</i>
<i>4</i>	<i>July-17</i>	<i>170876</i>	<i>7364</i>	<i>62768</i>	<i>Cash</i>
<i>5</i>	<i>August 17</i>	<i>179026</i>	<i>8150</i>	<i>60260</i>	<i>Cash</i>
<i>6</i>	<i>September 17</i>	<i>185886</i>	<i>6860</i>	<i>36347</i>	<i>Cash</i>
<i>7</i>	<i>October 17</i>	<i>190779</i>	<i>4893</i>	<i>25960</i>	<i>Cheque</i>
<i>8</i>	<i>November 17</i>	<i>195676</i>	<i>4897</i>	<i>26038</i>	<i>Cheque</i>
<i>9</i>	<i>December</i>	<i>201613</i>	<i>5937</i>	<i>29896</i>	<i>Cheque</i>

	17				
10	January 18	205061	3448	18613	Cheque
11	February 18	207750	2689	15047	Cash
12	March 18	211100	3350	18628	Cheque
	Consumer No.9629274111				
1	April-17	4841	4872	39603	Cash
2	May-17	12354	7493	57004	Cash
3	June-17	21189	8835	78058	Cash
4	July-17	29275	8086	61422	Cash
5	August-17	37104	7829	63616	Cash
6	September-17	45693	8589	69182	Cash
7	October-17	55650	9957	79873	Cheque
8	November-17	62562	6912	61162	Cheque
9	December-17	69034	6472	54271	Cheque
10	January-18	77535	8501	66165	Cheque

11	February-18	81561	4026	36618	Cheque
12	March-18	87786	6225	52851	Provision

8. The Ld. CIT(A) did not accept the contention of the assessee and upheld the disallowance made by the CPC in para 4.2 as under:

"4.2 Ground of Appeal No.2 pertains to the contention of the appellant that the Ld. A.O was not justified in making additions on account of cash payment made to MPPKVCL, A government agency for power distribution. As per the appellant it was not a violation of Rule 6DD. It is noticed that the Ld. Assessing Officer/CPC passed the order u/s 154 of the Act by disallowing the said amount. As per the appellant the Ld. A.O/CPC did not pass any order u/s 143(1)(a) what directly passed the order 154 of the Act. On merits the appellant given details of payment made to the above agency which were both in cheque and cash. I have gone through the submission of the appellant and noticed that his cash payments are not covered in any clause of the Rule 6DD. The ground of the appellant is dismissed."

9. Thus it is clear that the CIT(A) has passed a very cryptic and non-peaking order while dismissing the appeal of the assessee. The CIT(A) has not discussed the arguments advanced by the assessee and the reasoning for holding that the payment made by the assessee are not covered by the exception clause of Rule 6DD. It is pertinent to note that the CIT(A) has not disputed the fact that the payment in question are made towards electricity bills raised by the MPPKVCL which is a company owned by Madhya Pradesh

Government. The payments were made by the assessee for electricity consumption of the assessee itself which is duly supported by the bills raised by the company as well as receipts of these payments were issued by the distribution company. Therefore, the genuineness of the expenditure incurred by the assessee for the purpose of business has not been disputed by the tax authorities. The Hon'ble Andhra Pradesh High Court in the case of **Mudiam Oil Co. vs. ITO supra** has held as under:

"There is little merit in this contention. 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 clear 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) 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 disclosed source. The terms of section 40A(3) are not absolute. Consideration of business expediency and other relevant factors are not excluded. The 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 the business transactions and to prevent the use of unaccounted money or reduce the chances to use black money for business transactions. If the payment is made by a crossed cheque on a bank or a 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 trade or business."

10. The above cited judgment of **Hon'ble A.P High Court V Mudiam Oil Co Vs. ITO** has been upheld by the Hon'ble Supreme Court in the case of Attar Singh Gurumukh Vs. ITO 191 ITR 667 and the relevant observation of Hon'ble Supreme Court in para 7 and 8 are as under:

"7. In our opinion, there is little merit in this contention. 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 clear 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 disclosed sources. The terms of section 40A(3) are not absolute. Consideration of business expediency and other relevant factors are not excluded. The 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 the business transactions and to prevent the use of unaccounted money or reduce the chances to use black-money for business transactions. - Mudiam Oil Co. v. ITO [1973] 92 ITR 519 (AP). If the payment is made by a crossed cheque drawn on a bank or a 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.

8. As to the second question, it may be stated that the word 'expenditure' has not been defined in the Act. It is a word of wide import. Section 40A(3) refers to the expenditure incurred by the assessee in respect of which payment is made. It means all outgoings are brought under the word 'expenditure' for the purpose of the section. The expenditure for purchasing the stock-in-trade is one of such outgoings. The value of the stock-in-trade has to be taken into account while determining the gross profits under section 28 of the Act on principles of commercial accounting. The payments made for purchases would also be covered by the word 'expenditure' and such payments can be disallowed if they are made in cash in the sums exceeding the amount specified under section 40A(3). We have earlier observed that rule 6DD has to be read along with section 40A(3). The rule also contemplates payments made for stock-in-trade and raw materials. This rule is in accordance with the terms of section 40A(3). The rule provides that an assessee can be exempted from the requirements of payment by crossed cheque or a crossed bank draft where the purchases are made of certain agricultural or horticultural commodities or from a village where there is no banking facility. Section 40A(3) is, therefore, attracted to payments made for acquiring stock-in-trade and other materials. This is also the view taken by several High Courts. - Sajowanlal Jaiswal v. CIT [\[1976\] 103 ITR 706 \(Ori.\)](#), U.P. Hardware Store v. CIT [\[1976\] 104 ITR 664 \(All.\)](#), Raton Udyog v. 1TO [\[1977\] 109 ITR 1 \(All\)](#), PH. Textiles v. CIT [\[1980\] 121 ITR 237 \(Ker.\)](#), CIT v. Kishan Chand Maheshwari Dass [\[1980\] 121 ITR 232 \(Punj. & Har.\)](#), Kanti Lal Purshottam & Co. v. CIT [\[1985\] 155 ITR 519 \(Raj.\)](#), CIT v. New Light Tin Mfg. Co. [\[1980\] 121 ITR 229 \(Punj. & Har.\)](#), Fakri Automobiles v. CIT [\[1986\] 160 ITR 504 \(Raj.\)](#), Venkata Satyanarayana Timber Depot v. CIT [\[1987\] 165 ITR 253 \(AP\)](#), and Akash Films v. CIT [\[1991\] 190 ITR 32 \(Kar.\)](#). The decisions of the High Courts of Andhra Pradesh, Orissa, Allahabad, Kerala, Karnataka, Punjab & Haryana, Rajasthan and Patna are to the effect that the payments made for purchasing stock-in-trade or raw materials should also be regarded as expenditure for the purpose of section 40A(3). The only discordant note struck on this aspect is by the Gauhati High Court in CIT v. Hardware Exchange [\[1991\] 190 ITR 61](#). The Gauhati High Court has observed that section 40A(3) applies only to payments made on account of 'expenditure incurred' and the payment made for purchase of stock-in-trade cannot be termed as 'expenditure incurred' since money does not go irretrievably in such cases. We are unable to agree with the view taken by the Gauhati High Court."

Therefore the Hon'ble Supreme Court has held that the terms of Section 40A(3) are not absolute as the consideration of business expediency and other relevant factors are not excluded. Thus the Hon'ble Supreme Court has observed that the provisions of Section 40A(3) and rule 6DD are independent to regulate the business transactions and to prevent the use of unaccounted money or reduce the chances to use black money for business transactions. If the payment is made by crossed cheques or crossed bank draft then it will be easier to ascertain whether the payment was genuine and out of income from disclosed sources. Therefore, the genuine and bonafide transactions are not taken out of the sweep of the section. It is open to assessee to furnish to the satisfaction of the A.O the circumstances under which the payment in the manner prescribed u/s 40A(3) was not made.

11. A similar view has taken by the **Hon'ble Rajasthan High Court in the case of Fakri Automobiles V CIT (supra)**. The **Kolkata Bench of ITAT in the case of Daljeet Singh, Kolkata Vs. ACIT, ITA No.769/Kol/2018** vide order dated 03.04.2019 has also

considered an identical issue of disallowance u/s 40A(3) on account of cash payment of electricity bills in para 5 as under:

5. Heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, we hold as follows.

6. The Jaipur Bench of the Tribunal in the case of M/s. A Daga Royal Arts, discussed the entire law on [Section 40A\(3\)](#) of the Act, and held as follows:-

"20. In case of [Attar Singh Gurmukh Singh v. ITO](#) (supra), the matter which came up for consideration before the Hon'ble Supreme Court, the facts of the case were that assessee had made payment in cash exceeding a sum of Rs. 2,500/- for purchase of certain stock-in-trade. Payments were not allowed as deductions in the computation of income under the head "profits and gains of business or professions" as the same were held to be in contravention of [section 40A\(3\)](#) read with that 6DD of the Income rules. In that factual background, the question regarding validity of [section 40A\(3\)](#) and applicability of the said provisions to payment made for acquiring stock-in-trade came up for consideration before the Hon'ble Supreme Court.

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21. The Hon'ble Supreme Court referring to the provisions of [section 40A\(3\)](#) and Rule 6DD and in particular, Rule 6DD(j), as existed at relevant point in time, has held as under:-

"6. As to the validity of [section 40A\(3\)](#), it was urged that if the price of the purchased material is not allowed to be adjusted against the sale price of the material sold for want of proof of payment by a crossed cheque or crossed bank draft, then the income-tax levied will not be on the income but it will be on an assumed income. It is said that the provision authorizing levy tax on an assumed income would be a restriction on the right to carry on the business, besides being arbitrary.

7. In our opinion, there is little merit in this contention. [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 clear 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 disclosed sources. The terms of [section 40A\(3\)](#) are not absolute. Consideration of business expediency and other relevant factors are not excluded. The 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 the business transactions and to prevent the use of unaccounted money or reduce the chances to use black- money for business transactions. - *Mudiam Oil Co. v. ITO* [1973] 92 ITR 519 (AP). If the payment is made by a crossed cheque on a bank or a 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."

22. Further, the Hon'ble Supreme Court upheld the applicability of [section 40A\(3\)](#) to payment made for acquiring stock-in-trade and raw materials and also affirmed the decision of Hon'ble Rajasthan High Court in case of *Fakri Automobiles v. CIT* [1986] 160 ITR 504 (Raj) to the effect that the payments made for purchasing stock-in-trade or raw material should also be regarded as expenditure for the purposes of [section 40A\(3\)](#) of the Act.

23. The Hon'ble Supreme Court has therefore upheld the constitutional validity of [section 40A\(3\)](#) of the Act and has held that the provisions are not intended to restrict the business activities and restraint so provided are only intended to curb the chances and opportunities to use or create black money and the same should not be regarded as curtailing the freedom of trade or business. The Hon'ble Supreme Court has thus laid great emphasis on the intention behind introduction of these provisions and it would therefore be relevant to examine whether in the present case, there is any violation of such intention and if ultimately, it is determined that such intention has been violated, then certainly, the assessee deserves the disallowance of the expenditure so claimed.

24. The Hon'ble Supreme Court referring to the provisions of [section 40A\(3\)](#) as existed at relevant point in time which talks about considerations of business expediency and other relevant factors and Rule 6DD(j) which provides for the exceptional or unavoidable circumstances and the fact that the payment in the manner aforesaid was not practical or would have caused genuine difficulty to the payee and furnishing the necessary evidence to the satisfaction of the Assessing Officer as to the genuineness of the payments and the identity of the payee has held that:

"The terms of [section 40A\(3\)](#) are not absolute. Consideration of business expediency and other relevant factors are not excluded. The 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 I.T.A. No.769/Kol/2018 Assessment Year: 2010-11 Shri Daljit Singh exempted from the requirement of payment by a crossed cheque or crossed bank draft in the circumstances specified under the rule."

25. Here, it is relevant to note that there has been no change in the provisions of [section 40A\(3\)](#) in so far as considerations of business expediency and other relevant factors are concerned, as existed at relevant point in time and as considered by the Hon'ble Supreme Court and the provisions of [section 40A\(3\)](#) as exist now and relevant for the impugned assessment year i.e. AY 2013-14. However, Rule 6DD(j) has been amended and by notification dated 10.10.2008, it now provides for an exception only in a scenario where the payment was required to be made on a day on which banks were closed either on account of holiday or strike. A question which arises for consideration is whether the legal proposition so [laid down](#) by the Hon'ble Supreme Court regarding consideration of business expediency and other relevant factors has been diluted by way of delegated legislation in form of Income Tax Rules when the parent legislation in form of [section 40A\(3\)](#) to which such delegated legislation is subservient has been retained in its entirety. Alternatively, can it be said that what has been prescribed as exceptional circumstances in Rule 6DD as amended are exhaustive enough and which visualizes all kinds and nature of business expediency in all possible situations.

26. If we look at the legislative history of [section 40A\(3\)](#) and Rule 6DD, we find that initially, [section 40A\(3\)](#) provides for disallowance of 100% of the expenditure unless the matter falls under exception as provided in Rule 6DD(j) Later on, [section 40A\(3\)](#) has been amended to provide for disallowance of 20% of the expenditure incurred in cash and Rule 6DD(j)

was omitted. Thereafter, by virtue of another amendment, disallowance under [section 40A\(3\)](#) was increased from 20% to 100%, however, Rule 6DD(j) was not reintroduced in original form to provide for exceptional and unavoidable circumstances rather it was restricted to payment by way of salary to employees and thereafter, by virtue of latest amendment in year 2008 to payments made on a day on which the banks were closed on account of holiday or strike.

27. We do not believe that by virtue of these amendments, the legal proposition so [laid down](#) by the Hon'ble Supreme court regarding consideration of business expediency and other relevant factors has been diluted in any way. At the same time, we also believe that Rule 6DD as amended are not exhaustive enough and which visualizes all kinds and nature of business expediency in all possible situations and it is for the appropriate authority to examine and provide for a mechanism as originally envisaged which provides for exceptional or unavoidable circumstances to the satisfaction of the Assessing officer whereby genuine business expenditure should not suffer disallowance.

28. Further, the Courts have held from time to time that the Rules must be interpreted in a manner so as to advance and not to frustrate the object of the legislature. The intention of the legislature is manifestly clear and which is to curb the chances and opportunities to use or create black money and to ascertain whether the payment was genuine or whether it was out of the income from disclosed sources. And [Section 40A\(3\)](#) continues to provide that no disallowance shall be made in such cases and under such circumstances as may be prescribed having regard to the nature and extent of the banking facilities available, consideration of business expediency and other relevant factors. In our view, given that there has been no change in the provisions of [section 40A\(3\)](#) in so far as consideration of business expediency and other relevant factors are concerned, the same continues to be relevant factors which needs to be considered and taken into account while determining the exceptions to the disallowance as contemplated under [section 40A\(3\)](#) of the Act so long as the intention of the legislature is not violated. We find that our said view find resonance in decisions of various authorities, which we have discussed below and thus seems fortified by the said decisions.

29. We refer to the decision of the Hon'ble Rajasthan High Court in case of [Smt. Harshila Chordia vs. ITO](#) (supra), where the facts of case were that the assessee had made certain cash payments towards purchase of scooter/mopeds which exceeded Rs. 10,000/- in each case to the principal agent instead of making payment through the cross cheques or bank draft. The Assessing Officer invoked the provisions of [section 40A\(3\)](#) and held that they were no exceptional circumstances falling under rule 6DD which

could avoid consequences of the provisions of [section 40A\(3\)](#) of the Act. The Id. CIT(A) held that such exceptional circumstances did exist. However, the findings of the Id. CIT(A) were reversed by the Tribunal and the matter came up for consideration before the Hon'ble High Court.

30. The Hon'ble High Court observed that the principal reason which weighed with the Tribunal in discarding the explanation furnished by the assessee was that the case of the assessee did not fall in any of the clauses enumerated in the circular issued by the CBDT about the explanatory note appended to clause (j) was to operate as it was existing at the relevant time and enumerated circumstances in the circular was exhaustive of exceptional circumstances. The Hon'ble High Court I.T.A. No.769/Kol/2018 Assessment Year: 2010-11 Shri Daljit Singh observed that the Tribunal has erroneously assumed that enumeration of instances in the circular in which the provisions of clause (j) under rule 6DD would operate to be exhaustive of such circumstances and had not been properly understood its implication. It was further observed by the Hon'ble High Court that primary object of enacting [section 40A\(3\)](#) in its original incarnation was two-fold, firstly, putting a check on trading transactions with a mind to evade the liability to tax on income earned out such transaction and, secondly, to inculcate the banking habits amongst the business community. The consequence which was provided was to disallow of deduction of such payments/expenses which were not through bank either by crossed cheques or by demand draft or by pay order. It was further held by the Hon'ble High Court that:

".....Apparently, this provision was directly related to curb the evasion of tax and inculcating the banking habits. Therefore, 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 which has been overlooked by the Tribunal.

31. It was accordingly held by the Hon'ble High Court that it is the relevant consideration for the assessing authority under the [Income Tax Act](#) that before invoking the provisions of [section 40A\(3\)](#) in light of Rule 6DD as clarified by circular of the CBDT that whether the failure on the part of the assessee in adhering to requirement of provisions of [section 40A\(3\)](#) has any such nexus which defeats the object of provision so as to invite such a consequence. This is particularly so, because the consequence provided [u/s 40A\(3\)](#) for failure to make payments through bank is not absolute in terms nor automatic but exceptions have been provided and leverage has been left for little flexing by making a general provision in the form of clause (j) in rule 6DD. Thereafter, the Hon'ble High Court refers to

the clause 6DD(j) and the circular dated 31st May, 1977 issued by the Board in the context of what shall constitute exceptional and unavoidable circumstances within the meaning of section Clause (j). The Hon'ble High Court observed that the circular in paragraph 5 gives a clear indication that rule 6DD(j) has to be liberally construed and ordinarily where the genuineness of the transaction and the payment and the identity of the receiver is established, the requirement of rule 6DD(j) must be deemed to have been satisfied. The Hon'ble High Court observed that apparently [section 40A\(3\)](#) was intended to penalize the tax evader and not the honest transactions and that is why after framing of rule 6DD(j), the Board stepped in by issuing the aforesaid circular and this clarification, in our opinion, is in conformity with the principle enunciated by the Supreme Court in *CTO vs. Swastik Roadways* reported in [2004] 2 RC 539; [2004] 3 SCC 640.

32. The legal proposition that arises from the above decision of the Hon'ble Rajasthan High Court is that 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 and which should be examined before invoking the rigours of [section 40A\(3\)](#) of the Act.

33. In case of [Anupam Tele Services v. Income Tax Officer](#), the matter which came up for consideration before the Hon'ble Gujarat High Court, the facts of the case were that the assessee who is involved in the business of distribution mobile and recharge vouchers of Tata Tele Services Ltd had made payment of Rs. 33,10,194/- to Tata Tele Services Ltd., by cash on different dates. The assessee had made such payment through account payee cheques till 22nd Aug, 2005, when a circular was issued by Tata Tele Services Ltd., requiring the appellant to deposit cash at the company's office at Surat. In that factual background, the Hon'ble High Court held as under:-

"17. Rule 6DD of the IT Rules, 1962 provides for situations under which disallowance under [s. 40A\(3\)](#) shall not be made and no payment shall be deemed to be the profits and gains of business or profession under the said section. Amongst the various clauses, cl. (j) which is relevant, read as under:

(j) where the payment was required to be made on a day on which the banks were closed either on account of holiday or strike;

18. It could be appreciated that [s. 40A](#) and in particular sub-cl. (3) thereof aims at curbing the possibility of on-money transactions by insisting that all payments where expenditure in excess of a certain sum (in the present

case twenty thousand rupees) must be made by way of account payee cheque drawn on a bank or account payee bank draft.

19. As held by the Apex Court in case of *Attar Singh Gurmukh Singh* (supra). "...In our opinion, there is little merit in this contention. *Sec. 40A(3)* must not be read in isolation or to the exclusion of *r. 6DD*. The section must be read along with the rule. If read together, it will be clear that the provisions are *I.T.A. No.769/Kol/2018 Assessment Year: 2010-11 Shri Daljit Singh* not intended to restrict the business activities. There is no restriction on the assessee in his trading activities. *Sec. 40A(3)* only empowers the A.O. 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 *s. 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 A.O. the circumstances under which the payment in the manner prescribed in *s. 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 *s. 40A(3)* and *r. 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:"

20. It was because of these considerations that this Court in case of *Hynoup Foods (P.) Ltd.* (supra) observed that the genuineness of the payment and the identify of the payee are the first and foremost requirements to invoke the exceptions carved out in *r. 6DD(j)* of the *IT Rules, 1962*.

21. In the present case, neither the genuineness of the payment nor the identity of the payee were in any case doubted. These were the conclusions on facts drawn by the *CIT(A)*. The Tribunal also did not disturb such facts but relied solely on *r. 6dd(j)* of the rules to hold that since the case of the assessee did not fall under the said exclusion clause nor was covered under any of the clauses of *r. 6DD*, consequences envisaged in *s. 40A(3)* of the Act must follow.

22. In our opinion, the Tribunal committed an error in coming to such a conclusion. We would base our conclusions on the following reasons:

(a) The paramount consideration of [section 40A\(3\)](#) is to curb and reduce the possibilities of black money transactions. As held by the Supreme Court in [Attar Singh Gurmukh Singh](#) (supra), [section 40A\(3\)](#) of the Act does not eliminate considerations of business expediencies.

(b) In the present case, the appellant assessee was compelled to make cash payments on account of peculiar situation. Such situation was as follow-

(i) the principal company, to which the assessee was a distributor, insisted that cheque payment from a co-operative bank would not do, since the realization takes a longer time;

(ii) the assessee was, therefore, required to make cash payments only;

(iii) Tata Tele Services Ltd. assured the assessee that such amount shall be deposited in their bank account on behalf of the assessee;

(iv) It is not disputed that the Tata Tele Services Ltd. did not act on such promise;

(v) if the assessee had not made cash payment and relied on cheque payments alone, it would have received the recharge vouchers delayed by 4/5 days and thereby severely affecting its business operations.

We would find that the payments between the assessee and the Tata Tele Services Ltd. were genuine. The Tata Tele Services Ltd. had insisted that such payments be made in cash, which Tata Tele Services Ltd. in turn assured and deposited the amount in a bank account. In the facts of the present case, rigors of [s. 40A\(3\)](#) of the Act must be lifted.

23. We notice that the Division Bench of the Rajasthan High Court in case of [Smt. Harshila Chordia vs. ITO](#) (2007) 208 CTR (Raj) had observed that the exceptions contained in [r. 6DD](#) are not exhaustive and that the said rule must be interpreted liberally."

34. In case of [M/s Ajmer Food Products Pvt. Ltd., Ajmer vs. JCIT](#) (supra), a similar issue has come up before the Co-ordinate Bench and speaking through one of us, it was held as under:

"4.5 The genuineness of the transaction as well as the identity of the payee are not disputed. Further, the appellant has explained the business expediency of making the cash payments to both the parties which has not been controverted by the Revenue. Following the decision of Gujarat High Court in case of [Anupam Tele Services](#) (supra) and Rajasthan High Court in case of [Harshila Chordia](#) (supra), the addition of Rs. 45,738/- under [section 40A\(3\)](#) is deleted."

35. In case of *Gurdas Garg vs. CIT(A), Bathinda (supra)*, the matter which came up for consideration before the Hon'ble Punjab & Haryana High Court, the facts of the case are *pari materia* to the instant case and the ratio of the said decision clearly applies in the instant case. In that case, the facts of the case were that the assessee was engaged in trading in properties and during the course of I.T.A. No.769/Kol/2018 Assessment Year: 2010-11 Shri Daljit Singh assessment proceedings, the AO observed that there are transactions where the payments have been made in excess of Rs. 20,000/- in cash which were disallowed u/s 40A(3) of the Act. The Hon'ble High Court held that rule 6DD(j) is not exhaustive of the circumstances in which the proviso to section 40A(3) is applicable and it only illustrative. The Hon'ble High Court refers to the decision of the Hon'ble Rajasthan High Court in case of *Smt. Harshila Chordia v. ITO (Supra)* and the decision of Hon'ble Supreme Court in case of *Attar Singh Gurmukh Singh v. ITO (Supra)*. The High Court further observed that the Id. CIT(A) has given a finding that the identity of the payee i.e. vendors in respect of land purchase by the appellant was established, the sale deeds were produced, the genuineness thereof was accepted and the amount paid in respect of each of these agreement was satisfied before the Stamp Registration Authority and the transactions were held to be genuine and the bar against the grant of deductions u/s 40A(3) of the Act was not attracted. The Hon'ble High Court further observed that the Tribunal did not upset these findings including as to the genuineness and the correctness of the transactions and it is also important to note that the Tribunal noted the contention on behalf of the appellant that there was a boom in the real estate market and therefore it was necessary, therefore, to conclude the transactions at the earliest and not to postpone them; that the appellant did not know the vendors and obviously therefore, insisted for payment in cash and that as a result thereof, payments had to be made immediately to settle the deals. The Tribunal did not doubt this case. The Tribunal, however, held that the claim for deduction was not sustainable. In view of Section 40A(3) as the payments which were over Rs. 20,000/- were made in cash. The Hon'ble High Court accordingly observed that "the Tribunal has not disbelieved the transactions or the genuineness thereof nor has it disbelieved the fact that payments having been made. More importantly, the reasons furnished by the appellant for having made the cash payments, which we have already adverted to, have not been disbelieved. In our view, assuming these reasons to be correct, they clearly make out a case of business expediency."

36. The Co-ordinate Bench in case of *M/s Dhuri Wine vs DCIT (ITA No. 1155/chd/2013 & others dated 09.10.2015)* has held that the proposition so laid down by the Hon'ble High Court in case of *Gurdas Garg (supra)* is quite unambiguous to the effect that even if the case of the assessee does not fall in any of the clauses of Rule 6DD of the Income Tax Rules, invoking

the provisions of [section 40A\(3\)](#) of the Act can be dispensed with if the assessee is able to prove the business expediency because of which it has to make the cash payments, the genuineness of the transactions have also to be verified.

37. The Co-ordinate Bench in case of [Rakesh Kumar vs. ACIT \(ITA No. 102\(Asr\)/2014 dated 09.03.2016\)](#) relying on the decision of Hon'ble Punjab and Haryana High Court in case of Gurdas Garg (*supra*) has held that the genuineness of the payment has not been doubted as the Assessing Officer himself has held that sale deeds of properties were registered with the Revenue department of the Government. Therefore, following the decision of Hon'ble Punjab and Haryana High Court, the payment for purchase of land was allowed.

38. We further note that in case of *M/s ACE India Abodes limited (DB Appeal No. 45/2012 dated 11.09.2017)*, a similar issue has come up before the Hon'ble Rajasthan High Court regarding payment for purchase of land from various agriculturist for which the assessee has paid consideration in cash and shown the land as its stock-in-trade. The Hon'ble Rajasthan High Court referring to the intent behind introduction of [section 40A\(3\)](#) and catena of decisions right from *Attar Singh Gurmukh Singh, Smt. Harshila Chordia, Gurdas Garg, Anupam Tele Services* referred *supra* has decided the issue in favour of the assessee and against the department.

39. The issue which is being disputed before us has to be considered and decided in light of facts on record and the legal position which emerges from the above referred decisions. The facts of the case are that during the year under consideration, the assessee firm has purchased 26 pieces of plot of land in the month of April and May, 2012 from various persons for a total consideration of Rs. 2,46,28,425/-, out of which payment amounting to Rs. 1,71,67,000/- were made in cash to various persons, payment amounting to Rs. 59,48,920/- were made in cheque to various persons, and Rs. 8,15,700/- and Rs. 6,84,296/- were paid in cash towards stamp duty and court fee respectively. During the course of assessment proceedings, the assessee submitted copies of the sale deed, the particulars of which find mention on page 7 and 8 of the assessment order. On perusal of the said details, it is observed that the said details contains the name of the seller, date of sale deed, plot no., purchase value, stamp duty, Court fee and mode of payment - cash/cheque. Therefore, as far as the identity of the persons from whom the purchases have been made and genuineness of the transactions of purchase of various plots of land and payment in cash is concerned, the same is I.T.A. No.769/Kol/2018 Assessment Year: 2010-11 *Shri Daljit Singh* evidenced by the registered sale deeds and there is no dispute which has been

raised by the Revenue either during the assessment proceedings or before us. The identity of the sellers and genuineness of the transactions is therefore fully established in the instant case.

40. From perusal of the assessment order, it is further noted that the AO, on perusal of the details of the properties purchased, as per copies of the sale deed furnished, held that the assessee had made cash payments regularly and no specific circumstances have been brought to his knowledge that the cash payments were made due to some unavoidable circumstances. It was held by the AO that maximum cash payments were made to persons residing in Jaipur city and in single family, repeated cash payments were made which itself shows that there were no unavoidable circumstances to make cash payments to the sellers. What is therefore relevant to note that the AO has appreciated the necessity of determining the unavoidable circumstances which could have led the assessee to make cash payments. During the course of assessment proceedings, it was submitted by the assessee that the payment for purchase of land has been made in cash because the sellers were new to the assessee and refused to accept the cash. It was submitted that the delay in making the cash payment, it could have lost the land deals. In this regard, the Id AR submitted before us that the assessee had purchased the lands both through cash and cheques. Based on the requirement of the seller, assessee had selected the mode of payment. For the sellers, who had insisted the payments in cash, assessee had withdrawn the cash from bank on the same date of registry and made the payments to seller accordingly. The withdrawals from bank and payments to seller have been tabulated below as per dates below:-

41. It was submitted by the Id AR that in order to secure the deal, assessee had no other option but to make the payment in cash. Cash payments were made from the disclosed sources being the amount withdrawn from bank. It was for sheer insistence of the seller that the payments were made in cash. Had the assessee denied the cash payment looking to the provisions of [sections 40A\(3\)](#), the deal could not have been finalized. In such circumstances, in the business interest and to complete the deal, the assessee had chosen to make the payments in cash fortified through registered sale deed. The payment has been made out of the explained sources, through the registered document and as a disclosed transaction.

42. We find force in the contentions so raised by the Id AR. The transactions have been executed by the assessee within a span of one and half month and there are transactions where the payment has been made through cheque and there are transactions where the payment has been made through cash. The said contentions are supported by the fact that on

the same day, there are cash and cheque payments as evidenced from the details of the transactions appearing at page 7 and 8 of the assessment order. It is therefore clear that the assessee was having sufficient bank balance and only at the insistence of the specific sellers, the assessee has withdrawn cash and made payment to them and wherever, the seller has insisted on cheque payments, the payment has been made by cheque. This makes out a case that the assessee has business expediency under which it has to make payment in cash and in absence of which, the transactions could not be completed. The second proviso to [section 40A\(3\)](#) refers to "the nature and extent of banking facility, consideration of business expediency and other relevant factors" which means that the object of the legislature is not to make disallowance of cash payments which have to be compulsory made by the assessee on account of business expediency. Further, 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.

43. In the entirety of facts and circumstances of the case and respectfully following the legal proposition laid down by the various Courts and Coordinate Benches referred supra, we are of the view that the identity of the persons from whom the various plots of land have been purchased and source of cash payments as withdrawals from the assessee's bank account has been established. 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 in the instant case. Further, as held by the Hon'ble Rajasthan High Court in case of [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. The intent and the purpose for which [section 40A\(3\)](#) has been brought on the statute books has been clearly satisfied in the instant case. Therefore, being a I.T.A. No.769/Kol/2018 Assessment Year: 2010-11 [Shri Daljit Singh](#) case of genuine business transaction, no disallowance is called for by invoking the provisions of [section 40A\(3\)](#) of the Act. "

4. We apply the propositions of law [laid down in](#) this order to the facts of this case, we find that there is no doubt that the assessee had consumed electricity and had paid these electrical charges in cash. The circumstances under which they were paid was explained. Just because the recipient of the money is a private company, it does not mean that the payment should be disallowed. As the genuineness of the payments are

not denied and as these are exception circumstances, we delete the disallowance.

5. In the result, the appeal of the assessee is allowed".

12. Accordingly in the facts and circumstances of the case when the payments are made towards the electricity bills raised by the MPPKVCL which is a government undertaking then the same falls under the exception carved out in clause (b) of Rule 6DD as well as following the decisions cited above the addition made by the CPC u/s 40A(3) and confirmed by the CIT(A) is deleted.

12. In the result the appeals of the assessee is allowed.

Order pronounced in the open court on 18.06.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 18.06.2024

Dev/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*