

आयकर अपीलीय अधिकरण
कोलकाता 'सी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA**

श्री संजय गर्ग, न्यायिक सदस्य
एवं
श्री संजय अवस्थी, लेखा सदस्य
के समक्ष
Before

**SRI SANJAY GARG, JUDICIAL MEMBER
&
SRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No.: 1363/KOL/2023
Assessment Year: 2011-12**

***M/s. A B (Wine) Stores.....Appellant
[PAN: AAJFA 6312 L]***

Vs.

JCIT, Range-37, Kolkata.....Respondent

Appearances:

Assessee represented by: S.K. Tulsian, Adv. and Mita Rizvi, CA.

Department represented by: Prabhakar Prakash Ranjan, Addl. CIT, Sr. DR.

Date of concluding the hearing : May 21st, 2024

Date of pronouncing the order : July 9th, 2024

ORDER

Per Sanjay Awasthi, Accountant Member:

In this case, it is seen that the assessee is a partnership firm running a business of trading in Indian made foreign liquor. The return of income for AY 2011-12 was filed on 26.09.2011 disclosing a total income of Rs. 15,14,564/-. It is further noticed that the ld. Pr. CIT passed an order u/s 263 of the Act on 11.03.2016, setting aside the order u/s 143(3) of the Act dated 04.03.2014, mainly to examine cash payments exceeding Rs. 20,000/- with a view towards examining them from the point of view of Section 40A(3) of the Act. The ld. AO determined that transactions worth Rs. 1,44,52,154/- were hit by provisions of Section 40A(3) of the Act.

1.1. Before the Id. CIT(A) the appellant reiterated his stand that the cash payments were necessary on account of certain extenuating circumstances. These circumstances need to be mentioned as they may have a bearing on the outcome of this case. It transpires that the appellant had defaulted on a loan availed from Federal Bank and thereafter, the Debt Recovery Tribunal, on being approached by the said bank, vide their order dated 25.07.2003, appointed a receiver, directing the appellant to deposit 20% of its daily sale proceeds with the receiver. It appears that the appellant found this arrangement to be inimical to his business in as much as whatever amount was deposited in the bank account was adjusted towards realisation of the net amount due, leaving the assessee with no worthwhile funds to meet its regular business expenses. It is claimed that this arrangement compelled the assessee to conduct its business outside of the banking channels. Needless to say, both the Id. AO and Id. CIT(A) did not agree with this line of reasoning and the impugned addition of Rs. 1,44,52,154/- was sustained.

2. Before us, the Id. A/R has filed revised grounds of appeal through an application as under:

“The appellant would like to substitute the following revised grounds of appeal for AY 2011-12.

1 (a) That on the facts and circumstances of the case, the Ld. CIT(A) erred in having upheld the addition u/s.40A(3) of the Act to the tune of Rs. 1,44,52,154/- on account of payments made in excess of Rs.20,000/- in aggregate on a single day to various parties without considering that the payments made by the assessee who is a retail vendor to the wholesale licensees acting as agents falls under the exception provided in Rule 6DD(k) of the IT Rules, 1962.

(b) That on the facts and circumstances of the case, the Ld. CIT(A) further failed to appreciate the fact that the relationship between the assessee (i.e. authorized retailer) and the Government of West Bengal (i.e. the supplier) acting under West Bengal Excise Rules through its Authorised Wholesaler Licensee (Agent), is one of ‘Principal’ and ‘Agent’.

The aforesaid ground arise out of the assessment order dated 04/03/2014 passed by the Ld. AO u/s.143(3) of the Act and upheld by the learned CIT(A) in his order dated 26/10/2023 passed u/s 250 of the Act.

Here, it is submitted that the above is a question of law and requires no further investigation of fresh facts by the lower authorities. It is well settled in law that a question of law can be raised at any stage of proceedings as held by the Hon'ble Supreme Court in the landmark judgment in the case of National Thermal Power Co. Ltd vs CIT (1998) 229 ITR 0383 wherein it was held that,

"The view that the Tribunal is confined only to issues arising out of appeal before the CIT(A) takes too narrow a view of the powers of the Tribunal. Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings such a question should be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee."

2.1. Right at the outset it may be mentioned that the revised grounds of appeal are admitted for adjudication on the basis of application extracted (*supra*).

2.2. The Id. A/R has taken us through the facts of the case which may be briefly summarised as under:

a) The appellant is carrying on the business as an authorised retail agent of foreign liquor carrying a license for the retail sale issued by the West Bengal Excise and Sales Department.

b) It has been stated that liquor is procured from the Government of West Bengal through its authorised suppliers, which in turn are granted license to act as wholesalers under the regulations of the Excise Department of the Government of West Bengal. Importantly the regulations of the West Bengal Government pursuant to notification from its Excise Department dated 29.08.2005 mandates the payment to be made by way of direct deposit into the bank account of the wholesale licensee.

c) Due to this mandate, the wholesale licensee acts at the instance of the State Government and can thus, be construed as an agent of the said State Government. This leads to the inference that the relationship between the assessee (authorised retailer) and Government of West Bengal (the supplier)

acting under West Bengal Excise Rules, through its authorised wholesale licensee (agent), is one of 'Principal' and 'Agent'.

d) Therefore, as has been argued, the payments made by the retail vendor (assessee) to the agents (wholesale licensee) falls under the exception provided under Rule 6DD(k) of the Rules.

e) The Id. A/R relied on the decision of the Hon'ble ITAT, Kolkata in the case of *Ramnagar Pachwai & C.S. (S) Shop vs. ITO* in ITA No. 148/KOL/2015 order dated 05.08.2016. It has been averred that this particular case has nearly identical facts to the present appeal.

2.3. Ld. D/R relied on the order of the authorities below to stress the point that provisions of Section 40A(3) of the Act were clearly attracted in the present case.

3. The rival contentions have been carefully considered. A copy of the case of *Ramnagar Pachwai & C.S. (S) Shop (supra)* has been placed before us and the Id. A/R carefully took us through the similarities of facts in the present case with that of the case relied upon. For a better understanding of the issue and the findings in the case of *Ramnagar Pachwai & C.S. (S) Shop (supra)* it would be necessary to extract some portions from the said order which are as under:

"22. It is not in dispute that M/s Asansol Bottling & Packaging Co. Pvt Ltd have been granted licence to act as a wholesaler for supply of country liquor to the retail vendor as per the regulations of the Excise Department, Government of West Bengal. At the cost of repetition, we would like to state that the said regulation mandated the payments to be made directly into the bank account of the said wholesale licensee by the retail vendor (i.e. assessee herein) for strict and effective regulation of the country liquor and for prevention of spurious stocks and black marketing transactions from the same. Hence it could be safely concluded that the said wholesale licensee had acted at the instance of the State Government. Once this is so, then the said wholesale licensee could be construed as an agent of the State Government. For the sake of convenience, the relevant rule is reproduced hereunder:-

Rule 6DD(k) – where the payment is made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person.

The payment made by the assessee retail vendor to the Principal, Government of West Bengal through its wholesale agent. The relationship between the assessee (authorized retailer) and Government of West Bengal (the supplier) acting under West Bengal Excise Rules through its Authorised Wholesaler Licensee (Agent), both de facto and de jure, is one of ‘Principal’ and ‘Agent’. We hold that the assessee retail vendor had made payment to the said agent (wholesale licensee) would fall under the exception provided in Rule 6DD(k) of the Rules. 23. The ld. AR had advanced another argument that the payment is made by the assessee to State Bank of India and accordingly the same would fall under the exception provided in Rule 6DD(a) of the Rules. We find that the assessee had made payments only to the customer of State Bank of India and not to State Bank of India. Hence the assessee’s case does not fall under the exception provided in Rule 6DD(a) of the Rules. 24. We hold from the aforesaid findings that the assessee’s case falls under the exceptions provided in Rule 6DD(b) and Rule 6DD(k) of the Rules. In view of the aforesaid facts and circumstances and respectfully following the judicial precedents relied upon hereinabove, we have no hesitation in deleting the disallowance made u/s 40A(3) of the Act in all the years under appeal. Accordingly, the grounds raised by the assessee for all the years under appeal are allowed.”

3.1. A perusal of the Hon'ble ITAT's case relied upon shows that the facts are nearly identical in as much as the present appeal, as also the case under consideration deals with liquor and in both the cases the issue involved was invocation of Section 40A(3) of the Act. It is a finding in the case of *Ramnagar Pachwai & C.S. (S) Shop (supra)* that the payment was made by the retail vendor, being the assessee in that case, to the ‘Principal’ being the Government of West Bengal through its wholesale agent. It has been further found that the relationship between the assessee and the Government of West Bengal, acting under West Bengal Excise Rules through its authorised wholesaler licensee was one of ‘Principal’ and ‘Agent’. In light of this reasoning it has been deduced that the provisions of Rule 6DD(k) of the Rules squarely applied in that instance, leading to relief from the rigours of Section 40A(3) of the Act.

3.2. We find that in the present case the facts are identical to the case of *Ramnagar Pachwai & C.S. (S) Shop (supra)* and hence there is no hesitation in

holding that the present appeal is covered in favour of the assessee by the case of *Ramnagar Pachwai & C.S. (S) Shop (supra)* leading to the deletion of addition of Rs. 1,44,52,154/-.

4. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 9th July, 2024.

Sd/-

[Sanjay Garg]

Judicial Member

Dated: 09.07.2024

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. M/s. A B (Wine) Stores, 8/7A, Mahatma Gandhi Road, Jorasanko, Kolkata, West Bengal, 700009.**
- 2. JCIT, Range-37, Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

Sd/-

[Sanjay Awasthi]

Accountant Member

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata