

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

**BEFORE SHRI G.S.PANNU, VICE PRESIDENT &  
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.3151/Del/2019  
[Assessment Year : 2013-14]**

Om Parkash, Vill.Hudina, Narnaul, Mahendragarh, Haryana-123001. <b>PAN-BOUPP3320P</b>	vs	ITO, Ward-02, Narnaul.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Ms.Rano Jain, Adv. and Ms. Mansi Jain, CA	
<b>Respondent by</b>	Shri Sandeep Kr.Mishra, Sr.DR	
<b>Date of Hearing</b>	26.04.2024	
<b>Date of Pronouncement</b>	11.07.2024	

**ORDER**

**PER KUL BHARAT, JM :**

The present appeal filed by the assessee is directed against the order of Ld. CIT(A), Rohtak dated 13.03.2019 for the assessment year 2013- 14. The assessee has raised following grounds of appeal:-

1. *“On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad, both in the eye of law and on the facts.*
2. (i). *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the disallowance of an amount of Rs.2,00,38,777/- on account of purchases, invoking the provisions of section 40A(3) of the Act.*  
  
(ii) *That the disallowance has been confirmed despite the assessee bringing on record all explanation and evidences to prove the genuineness and business expediency of the transactions.*
3. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of Ld AO in making addition of an amount of Rs. 16,00,000/- on account of bank deposits.*

4. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of Ld AO in disallowing an amount of Rs. 5,70,000/- on account of license fee paid to the Excise department.*
5. *The appellant craves leave to add, amend or alter any of the grounds of appeal.”*

2. Facts giving rise to the present appeal are that the assessee is engaged in the business of trading of Liquor [Indian-made Foreign Liquor (“I.M.F.L”)] and Beer. He filed his return of income, declaring income of INR 4,73,800/- on 29.09.2013. The case was selected for scrutiny assessment and a notice u/s 143(2) of the Income Tax Act, 1961 (“the Act”) was issued on 03.09.2014. Thereafter, other statutory notices were issued u/s 142(1) of the Act to the assessee. In response thereto, Ld. Authorized Representative (“AR”) of the assessee, Shri Mahesh Jain, CA attended the proceedings and furnished the details as called for from time to time. The Assessing Officer (“AO”) after examining the books of account on test check basis, proceeded to frame assessment vide order dated 04.03.2016. Thereby, the AO made addition of INR 2,00,38,777/- in respect of purchases exceeding INR 20,000/- made in cash by invoking the provision of section 40A(3) of the Act, addition on account of unexplained cash deposit in the bank account of the assessee amounting to INR 16,00,000/- and unexplained expenditure regarding excess claim of license fee of INR 5,70,000/-. Thus, the AO assessed the income of the assessee at INR 2,26,82,577/- against the income declared at INR 4,73,800/-.

3. Aggrieved against this, the assessee carried matter in appeal before Ld.CIT(A), who after considering the submissions of the assessee, sustained these additions and dismissed the appeal of the assessee.

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

5. **Ground Nos.1 & 5** raised by the assessee are general in nature, needs no separate adjudication.

6. The **Ground Nos. 2(i) and 2(ii)** raised by the assessee are against the sustaining of addition of INR 2,00,38,777/- on account of purchases made by invoking the provision of section 40A(3) of the Act.

7. Ld. Counsel for the assessee vehemently argued and reiterated the submissions as made in the written synopsis. She contended that authorities failed to appreciate the fact that intent of provision of section 40A(3) of the Act, was to curb the menace of black money. It was not intended for disturbing genuine business transactions. The AO has not doubted about the genuineness of expenditure. She contended that law cannot be interpreted in such a manner that it makes normal business transaction difficult. The business expediency should be given due credence and genuine expenditure should be allowed. For the sake of clarity, the relevant contents of the written synopsis are reproduced as under:-

*“Ground No. 2 relates to the disallowance of an amount of Rs.2,00,38,777/- on account of purchases invoking the provisions of section 40A(3) of the Act.*

*The assessee deals in retail trading of liquor (IMFL) and beer. In the year under consideration he has made purchases amounting to Rs.2,00,38,777/- from three parties in cash. Since the assessee could not explain the reason for making payment in cash the Ld. Assessing Officer (AO) disallowed the amount of Rs.2,00,38,777/- being cash payment exceeding Rs.20,000/- in a day invoking the provisions of section 40A(3) of the Act. The findings of the Ld. AO are at Pg. 8 of his order.*

*Before the Ld. Commissioner of Income Tax (Appeals) [CIT(A)], in his defense, the assessee explained that he had to make the purchases in cash as is the convention in the liquor trade, and in the absence of any findings given by the Ld. AO as to the transaction not being genuine, no disallowance under section 40A(3) of the Act could be made. Reliance was placed on a number of judgments of various Hon'ble High Courts and Hon'ble Benches of the Tribunal.*

*The Ld. CIT(A), after considering in detail dismissed the ground of appeal raised by the assessee stating that the provisions of the Act, Rule, Circular and various judicial decisions relied on by the assessee did not support the case of the assessee. The findings of the Ld. CIT(A) are at Pg. 18, Para 5.2.5 of his order.*

*The assessee is an individual dealing in trading of liquor and beer. In the year under consideration he has undisputedly made purchases in cash from three parties amounting to Rs.2,00,38,777/-. This is a fact on record that the TCS was deducted by these parties on the purchases. The Ld. AO himself has stated this fact in the show cause notice issued by him, as quoted in his order at Pg. 2.*

*The parties concerned were as follows:-*

- 1) Aravali Wines*
- 2) Poonia Wines*
- 3) Karan Singh*

*From the copy of Form 26AS it can be seen that all these three parties have duly deducted TCS on the amount of purchases made by the assessee in cash. The assessee has also claimed this amount of TCS in his return of income. Copy of the acknowledgement is placed at PB Pg. 1.*

*The Ld. AO himself had issued notice under section 133(6) of the Act to all these three parties whereby they were asked to confirm the transactions. All three parties have duly replied to the Ld. AO by providing necessary documents relating to the cash transactions, These documents are placed at PB Pg. 54 to 78. The Ld. AO as well as the Ld. CIT(A) had nowhere doubted the genuineness of these transactions.*

*From the documents and explanation placed before the lower authorities, as explained hereinabove, there remains no doubt as to the genuineness of the transactions. Where the genuineness of the transactions are not doubted and due to business expediency the assessee had to make the payments in cash, no disallowance under section 40A(3) should be made.*

*Reliance is placed on the following judgments:-*

- 1) Goel Connect Ltd, vs. DCIT, ITA No. 2896/Del/2018 dated 29.08.2022 (Delhi- ITAT)*
- 2) ITO vs. Suresh Kumar, ITA No. 4111/Del/2015 dated 09.12.2020 (Delhi- ITAT)*
- 3) Shakti Singh Gulia vs. ITO, ITA No. 6115/Del/2018 dated 15.06.2023 (Delhi-ITAT)*
- 4) Mana Ram Ganpat Ram & Co. vs. ITO, ITA No. 6764/Del/2019 dated 13.09.2022 (Delhi- ITAT)*
- 5) Galaxy Jewellers Pvt. Ltd. vs. DCIT, ITA No. 5293/Del/2013 dt. 15.09.2017 (Delhi- ITAT)*
- 6) Kedar Nath Sawhney vs. ACIT, ITA No. 5191/Del/2019 dated 17.03.2021 (Delhi- ITAT)*
- 7) Raju Kashyap v. ACIT, ITA No. 905/Del/2022 dated 02.01.2023 (Delhi- ITAT)*

8) *Dhuri Wines vs. DCIT, ITA No. 1155/Chd/2013 dated 09.10.2013 Chd-ITAT)*

9) *R.C. Goyal vs. CIT, ITA No. 636/2012 (Delhi HC)*

10) *Gurdas Garg vs. CIT, ITA No. 413/2014 dated 16.07.2015 (P&H HC)*

11) *Attar Singh Gurmukh Singh vs. ITO, (1991) 191 ITR 667 (SC)."*

8. Ld. Counsel for the assessee vehemently argued that despite having noted that purchases were genuine, the lower authorities proceeded to make impugned addition in an arbitrary manner and contrary to the settled position of law. Ld. Counsel for the assessee submitted that the Co-ordinate Benches of the Tribunal have held that if the purchases are genuine, in that event, no disallowance could be made by invoking the provision of section 40A(3) of the Act. Ld. Counsel for the assessee further relied on various case laws as mentioned in the written synopsis. To buttress the contention that if the payment has been made out of business expediency then the authorities would not be justified by invoking the provision of section 40A(3) of the Act.

9. Ld. Sr. DR for the Revenue opposed these submissions and supported the orders of the authorities below. Ld. Sr. DR took us through the order of Ld.CIT(A) and submitted that all the contentions of the assessee have been considered and correctly decided by Ld.CIT(A). He contended that the assessee failed to demonstrate business expediency for such cash payments. He contended that it was incumbent upon the assessee to prove that his case falls in one of the exceptions as embodied in Rule 6DD of the Income Tax Rules, 1962 ("the Rules"). A bald assertion would not be sufficient for coming to the conclusion that the impugned expenditure was made out of business expediency and/or falls under any of the exception provided by law. In the

absence of such material, the findings of Ld.CIT(A) should not be disturbed. Therefore, the authorities were justified in making the addition. He submitted that even if the purchases are found to be genuine, the assessee was required to give reason why payment in cash was necessitated.

10. We have heard the contentions of both the parties and perused the material available on record. There is no dispute with regard to the fact that the assessee has made payment in cash in respect of the purchases. The law mandates that the business expenditure if any needs to be incurred through banking channels if the payment exceeds to INR 20,000/-. Of course, certain exceptions are also provided under the Act. The assessee has not claimed that his case fall any of the exceptions i.e. payment was made when there was banking holiday. The payment made at that place where there was no banking facility and it is also not the case that the payments were made to specific class of persons and payment to such persons by cash is excluded under law. The only contention of the assessee is that the payment has been made out of business expediency and the AO has not doubted about the genuineness of transaction. Upon a pointed query, Ld. Counsel for the assessee failed to demonstrate from the record that the assessee had cited any plausible reason which could be construed as business expediency for making such payments in cash. In the absence of such material, the lower authorities were justified in rejecting the claim of the assessee. It is evident from the impugned order of Ld.CIT(A) wherein he categorically recorded that the assessee could not demonstrate that there was any business expediency i.e. he was not known to the seller, that the assessee or the seller did not hold bank accounts as they

were located in the remote places. The seller had refused to accept the payments by way of cross cheque/draft and his business interest would suffer due to non-availability of goods otherwise then such seller or sellers acting as commission agent, were required to pay cash for purchase of goods. Specific discount is offered by the seller for cash payments. He has not given reason whatsoever for making purchase in cash. Thus, both in letter and spirit, the assessee failed to substantiate why additions should not be made as per the provisions of section 40A(3) of the Act. This finding of fact is not rebutted by the assessee by bringing any contrary material on record. The assessee was afforded sufficient opportunities to prove business expenditure and/or to demonstrate that his case falls into any exceptions. Ld. CIT(A) had examined all aspects of the matter and by way of well-reasoned order, he had declined to accept the contention of the assessee. Before us also, Ld. Counsel urged that the concerned parties had confirmed payments in cash. The TCS as per law had been deducted. In our considered view, the confirmation by seller and TCS at source *ipso facto*, would not be justifiable reason for making payment in cash. The assessee is required to prove that he had no option other than making payment in cash under the compelling, commercial expediency. In the present case, no such case is made out by the assessee. If we accept the contention of the Ld. Counsel for the assessee that genuineness of expenditure is not in doubt hence, provision of section 40A(3) will have no application. In that event, it will render the provision of section 40A(3) of the Act as redundant. Under the facts and circumstances of the present case, the case laws relied by Ld. Counsel for the assessee would not come to rescue of the

assessee. We therefore, do not see any good reason to disturb the finding of Ld.CIT(A). The Ground Nos. 2(i) & 2 (ii) raised by the assessee are rejected.

11. **Ground No.3** raised by the assessee is against sustaining of addition of INR 16,00,000/- in respect of cash deposited in the bank account.

12. Ld. Counsel for the assessee submitted that authorities below were not justified in making the impugned addition and treating the amount deposited as unexplained.

13. Ld. Sr. DR for the Revenue opposed these submissions and supported the orders of the authorities below. He contended that the assessee miserably failed to prove the source of cash deposits.

14. We have heard the contentions of both the parties and perused the material available on record. Law is well-settled that if any amount is found credited in the bank account of the assessee, it is incumbent upon him to prove the source of such credit. If he fails to do so, the authorities would be justified in drawing adverse inference against such credits. In the case in hand, the assessee could not prove the source of cash deposits neither before authorities below nor before this Tribunal. Therefore, considering the fact that the assessee grossly failed to prove the source of the impugned cash deposit in bank account, we do not see any reason to disturb the findings of authorities below. Ground No.3 raised by the assessee is, therefore, rejected.

15. **Ground No.4** raised by the assessee is against the disallowance of sum of INR 5,70,000/- on account of license fee paid to Excise Department.

16. Ld. Counsel for the assessee submitted that the assessee had claimed an amount of INR 1,18,70,500/- on account of legal fee which is license fee paid to Excise Department. The AO was of the view that the assessee had claimed excessive sum of INR 5,70,000/-. She contended that the AO had issued notice to wrong authority u/s 133(6) of the Act to the Excise Department, Narnaul. However, the payment was made to Excise Department, Rajasthan since the assessee had an outlet in Rajasthan as well. The assessee had provided ledger account to the AO which demonstrated that the payment was made to the Excise Department, Rajasthan. Ld. Counsel for the assessee submitted that the AO therefore, committed a potent error in making disallowances. She contended that the genuine business expenditure was disallowed in an arbitrary fashion. She prayed that under the facts of the case, the impugned disallowance deserved to be deleted.

17. On the other hand, Ld. Sr. DR for the Revenue supported the orders of the authorities below.

18. We have heard the contentions of both the parties and perused the material available on record. The contention of the Ld. Counsel for the assessee is that the payment was made to the Excise Department, Rajasthan and in support of the same, a receipt has been filed in the Paper Book at Pages 106 to 107. Ld. Counsel for the assessee drew our attention towards receipt issued by the concerned Department. Therefore, looking to the facts of the present case that the assessee furnished some evidences to demonstrate that the payment was made to the Excise Department at Rajasthan. We find merit into plea of the assessee that AO failed to verify the correct facts regarding

payment of fee made to Excise Department, Government of Rajasthan. This claim of the assessee needs to be verified at the end of the AO. We therefore, restore this issue to the AO for verification. In the event, the AO finds that the payment was made to the Excise Department, Rajasthan during the relevant year, he would allow the claim of the assessee and delete the disallowance. Ground No.4 raised by the assessee is accordingly, allowed for statistical purposes.

19. In the result, the appeal of the assessee is allowed partly for statistical purposes.

Order pronounced in the open Court on 11<sup>th</sup> July, 2024.

***Sd/-***

**(G.S.PANNU)**  
**VICE PRESIDENT**

***Sd/-***

**(KUL BHARAT)**  
**JUDICIAL MEMBER**

\*Amit Kumar\*

Copy forwarded to:

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

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ITAT, NEW DELHI