

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI**

**BEFORE MS KAVITHA RAJAGOPAL, JM &
MS PADMAVATHY S, AM,**

**I.T.A. No.1272/Mum/2024
(Assessment Year: 2012-13)**

ITO-30(1)(1), Room No. 235, 2 nd Floor, Kautilya Bhawan, BKC, Mumbai-400051.	Vs.	Vilas Transport Company, 103/104, 1 st Floor, Vyapar Nagar, P.D. Mello Road, Masjid, Mumbai-400009. PAN : AAAFV0760G
Appellant)	:	Respondent)

Revenue/ Appellant by : Shri G.J. Ninawe, Sr. DR

Respondent /Assessee by : Shri Ajay Singh &
Shri Akshay Pawar, AR

Date of Hearing : 10.09.2024

Date of Pronouncement : 16.09.2024

ORDER

Per Padmavathy S, AM:

This appeal by the Revenue is against the order of Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC), Delhi [in short 'the CIT(A)'] dated 19.01.2024 for Assessment Year (AY) 2012-13. The Revenue raised the following grounds of appeal:

“1. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the disallowance made by AO of Rs 3,06,18,455/- u/s. 40A(3) of the Act without appreciating that these expenses were made in cash which were not routed through the books of account”.

"2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance made by AO, despite the fact that the assessee has violated the provisions of section 40A(3) of the Act, by making the payment in cash even though the payments were distributed between wages earner through only a single person aka gang leader."

2. The assessee is a firm engaged in the business of clearing and forwarding, stevedoring, transportation, loading and unloading on behalf of principals. The assessee filed the return of income for AY 2012-13 on 28.09.2012 declaring a total income of Rs.6,26,360/-. The case was selected for scrutiny and the statutory notices were duly served on the assessee. During the course of hearing, the Assessing Officer (AO) noticed that the assessee has shown gross receipts of Rs. 4,02,54,185/- and against this receipt the assessee has claimed various expenses incurred on behalf of the principal. The AO further noticed that the assessee has earned a net agency receipts to the tune of Rs. 44,21,404/- in the Profit and Loss account and has offered the same to tax. The AO called on the assessee to furnish details pertaining to the gross receipts which according to the assessee includes the reimbursement of expenses incurred by the assessee on behalf of the principals. The assessee furnished the details of expenses as tabulated below:

Description	Gross Amount	Paid by Cheque	Paid by cash	Outstanding
Stevedoring Charges	13092266	-	11304282	1787984
Handling charges	12451355	473408	11977947	-
Transport Charges	7766434	6451771	1314663	-
Godown repairing charges	101323	101323	-	-
Lunch Hire Charges	102500	102500	-	-
Godown management Charges	6740307	25067728	4235579	-
Total	40254185	9635730	28830471	

3. On perusal of the details furnished by the assessee, the AO noticed that the assessee has incurred certain expenditures to the tune of Rs. 2,88,30,471/- in cash.

The AO called on the assessee to show-cause why disallowance under section 40A(3) should not be made with respect to the expenses incurred in cash. In response the assessee submitted that the impugned payments are not debited to the P&L A/c claiming it to be expenses and therefore the provisions of section 40A(3) cannot be applied. The assessee further submitted that these payments which were made on behalf of the Principal were routed through gang leaders and were ultimately paid to the labourer where payment to any single labourer did not exceed limits prescribed under section 40A(3). The assessee furnished the details of payments to labourer including the vouchers and party wise payment details to the AO in this regard. The AO did not accept the submissions of the assessee and held that

“5.4 The submission of the assessee has been considered but I do not find any merit on it. The contention of the assessee that it had paid above expenses on behalf of its principal is not acceptable because the assessee has shown payable of Rs. 17,87,984/- for above expenses as on 31.3.2012 which is not reflected in the balance sheet. It means the assessee had made these expenses also during the year under consideration itself in cash. Further, the assessee has not furnished any details of the payment of outstanding liabilities of such expenses in subsequent year Further it is also pertinent to mention here that the major amount paid in the month of March 2012 in cash to gang leader and he had distributed to various labourers and that too all are uneducated to the extent that their thumb impressions were obtained as an acknowledgement of having received their dues. The assessee has made the payment of gang leader and he had distributed among the labourers it means the assessee made the cash payment to single person above the prescribed limit as per section 40A(3) of the I.T. Act. Further, for the A.Y.2009-10, the Ld.CIT[A] enhanced the assessed income for A.Y.2009-10 in the assessee's own case on the ground that when it is a cash payment to single party and there is a violation of section 40A(3), in that case, addition has to be 100% of such expenditure and not only 20% thereof as per the provisions prevailing for the previous year under consideration should be made.

5.5 During the year under consideration, the assessee has submitted the same details labour payment sheet cash vouchers etc. facts remain the same that assessee is making payment in cash on behalf of the principals to gang leader

as the same is not possible for the assessee to distribute huge cash every day to so many labourers working for the assessee to complete the task, it means cash payment made to person i.e. gang leader and provisions of section 40A(3) are applicable though not routed through profit and loss account, in turn the who in turn distribute the cash to labourer as the same is not possible for the assessee to distribute huge cash in so many labourers and same has not been proved by the assessee during the course of assessment proceedings.

5.6. Considering the totality of facts and circumstances of the case also giving due respect to the Ld.CIT(A)'s valued decision, disallowance of Rs.3,06,18,455/- being 100% of cash expenses amounting to Rs. 3,06,18,455/- (Rs.2,88,30,471 + Rs.17,87,984) is being made. since the provisions of section 40A(3) undergone major amendment vide finance Act, 2007 w.e.f. 01.04.2008 and hence added to the total income of the assessee returned. Penalty proceeding u/s. 271(1)(c) for furnishing inaccurate particulars of income are hereby initiated separately.”

4. On further appeal, the CIT(A) deleted the disallowance made by the AO by placing reliance on the decision of the Co-ordinate Bench in assessee's own case for AY 2011-12 (ITA No. 2600/Mum/2011 dated 24.11.2015). Aggrieved, the Revenue is in appeal before the Tribunal.

5. The ld. AR reiterated the submissions made before the AO stating that no disallowance under section 40A(3) is warranted since the impugned payments were not routed through the P&L A/c of the assessee. In this regard, the ld. AR submitted the details of the gross receipt from Principals and the details of various expenses reimbursed by the principals to substantiate that only the net agency fees is accounted as income and that the impugned payments made on behalf of principals are not routed through P&L account (page 2 to 10 of the PB). The ld. AR further submitted that the AO has considered the lumpsum payments made to the gang leaders while making disallowance under section 40A(3) whereas the assessee has made payments to the labourers through the gang leaders and that the payments to single labourer did not exceed the limit prescribed under section

40A(3). In this regard, the Id. AR took the Bench to the invoice, sample vouchers and the breakup of labour charges paid ultimately to the labourers (page 11 to 17 of PB). The screenshot of one such sample is reproduced below

VILAS TRANSPORT COMPANY

CLEARING, FORWARDING, STEVEDORING, HANDLING &
TRANSPORT CONTRACTORS

105 UTTAM HOUSE, P.D'MELLO ROAD, CARNAC BUNDER MUMBAI-400 009
TEL.: 23431861/62 FAX : 01-22-2343 4146
E-MAIL: peacock_shipping123@rediffmail.com

(11)

Bill No. VTC/CLR-9/2011-12 Date: 20.09.2011


M/s. GEETAPURAM PORT SERVICES LTD
DOLVI, TAL, PEN, DIST. RAIGAD

S.NO	PARTICULARS	QTY	RATE (Rs.) PER M.T.	AMOUNT	
				Rs.	P.
	M. V. PORT MORESBY Being Handling Charges for the vessel M.V. PORT MORESBY arrived on 08.09.2011 from INDONESIA carrying PCI COAL QTY: 38322 MT discharged at Mumbai Anchorage				
	Handling Charges.....	38322.00	6.40	245,260	00
	Agency Charges.....			100,340	00
	Govt. Service Tax @ 10.30 %			35,597	00
TOTAL RS:- THREE LAKHS EIGHTY ONE THOUSAND ONE HUNDRED NINETY SEVEN ONLY			TOTAL	3,81,197	00
			LESS ADV.	--	--
			NET TOTAL	3,81,197	00

Interest will be charged @ 24% if the Bill is not paid within 10 days after presentation
PAN NO. AAAPV8763G

E. & O.E

FOR M/S.VILAS TRANSPORT COMPANY



12

CASH VOUCHER
VILAS TRANSPORT COMPANY
Gala No. 309, Navratna Building, 3rd Floor, P.D'Mello Road, Camac Bunder, Mumbai - 9.
Tel.: 2348 8528

No. _____ Date 13/10/2011

To. Handling Charge Paid

Sr. No.	DESCRIPTION	Amount
	<u>Basic amount paid to handling charges to the labour as per list attached,</u>	<u>245260</u>
		<u>1</u>
	TOTAL	245260

Rupees: Two Lakh forty five thousand two hundred sixty one

Cashier: _____ Checked by: _____ Passed by: _____

RECEIVED: _____ JRE

List of Labour

Sr No	Name	Amount(Rs.)
1	Vijay Tamma Sragar	6,820
2	Bajirao Maruti Gadade	5,390
3	Sambhaji Chimaji Lokhande	7,530
4	Shahaji Nana Shinde	8,950
5	Tanaji Babuaro Hazare	6,529
6	Ganesh Ashok Solankar	4,685
7	Rajaram Tukaram Gawde	9,826
8	Dhanaji Rajaram Gadade	6,380
9	Tanaji Shivaji Ghode	5,739
10	Babasaheb Vithoba Ghode	6,475
11	Narayan Srimant Nile	7,593
12	Pandurang Babaso Aiwale	4,680
13	Kundlik Torappa Masal	9,784
14	Dadaso Sadashiv Shinde	5,497
15	Eknath Suryaba Kolekar	4,938
16	Ashok Baba Ghutukade	6,543
17	Deepak Rajaram Khaeat	7,900
18	Birappa Namdeo Kolekar	8,594
19	Birappa Pandurang Shinde	7,021
20	Rayappa Mangani Dhembre	8,643
21	Rama Babu Turai	5,738
22	Bausaheb Sadashiv Shinde	6,280
23	Shankar Shivaji Lokhande	9,325
24	Khandu Dnyanu Kolekar	8,440
25	Bhauso Pandurang Shinde	7,596
26	Ashok Mangani Dhembare	6,835
27	Nanasaheb Mahaling Bhusnar	6,153
28	Dharam Maruti Dorie	5,376
29	Dhula Bira Aldar	5,980
30	Dilip Dnyanu Vhanmne	8,638
31	Bajirao Maruti Gadade	8,539
32	Jotiram Sopan Ghodke	6,843
33	Uttam Baba Hubale	7,680
34	Dhanaji Rajaram Gadade	6,680
35	Birappa Khot	5,640
	Total	245,260

6. The ld. AR also submitted that the Co-ordinate Bench in assessee's own case for AY 2007-08, 2009-10, 2010-11 and 2011-12 have been consistently holding that no disallowance under section 40A(3) is warranted towards the impugned payments made by the assessee. The ld. AR further submitted that the nature of payments disallowed by the AO for the year under consideration are similar to that of earlier AYs and accordingly the issue is covered by the decision of the Co-ordinate Bench.

7. The ld. DR on the other hand submitted that the assessee has incurred expenditure in cash which fact has been admitted by the assessee itself while submitting the breakup of expenses before the AO. The ld. DR further submitted that the claim of the assessee that the expenses are not routed through P&L A/c cannot be admitted since the assessee has shown certain amount as expenses payable. The ld. DR also submitted that the assessee has paid the gang leader through cash voucher amount exceeding to the limit prescribed under section 40A(3) and therefore, the AO has correctly disallowed the expenses. Accordingly, the ld. DR prayed that the order of the AO be upheld.

8. We heard the parties and perused the material on record. The assessee is a clearing agent acting mainly on behalf of Principals. The assessee during the year under consideration has received certain charges as reimbursement from its Principals and has shown a net agency charges of Rs. 44,21,404/- as income in the P&L A/c. The assessee submitted before the AO the breakup of various expenses incurred on behalf of the Principal through cheque and cash (refer table extracted in the earlier part of this order). The AO disallowed the payments made in cash under section 40A(3) of the Act. The claim of the assessee with respect to the

payments made in cash is that the said payments are not routed through the P&L A/c and that the payments are made on behalf of Principals who have reimbursed the same to the assessee. The assessee further contended that the payments made to the gang leader should not be considered for the purpose of section 40A(3) since they have acted as intermediaries and the ultimate payment made to labourers are within the limit prescribed under section 40A(3).

9. We notice from the perusal of the sample documents (refer screen shots above) submitted that the assessee is raising invoices claiming reimbursement of the various expenses paid on behalf of the principals along with agency charges. The expenses claimed as reimbursement by the assessee are towards the various charges which are paid to the gang leader who in turn makes payment to the labourers. We notice from the perusal of the list of payments made to the labourers that there is merit in the claim that payment made to single labourer does not exceed the limit prescribed under section 40A(3). It is also relevant to mention here that the AO has not questioned the genuineness of the expenditure incurred by the assessee. The ld. AR during the course of hearing submitted that the nature of business in which the assessee is engaged in warrants payments to labourers in cash through gang leaders or otherwise the assessee will not be able to unload the items from the vessels immediately which will result in losses due to demurrage. The ld AR further submitted that the payments are made in cash to the labourers since they are uneducated not having access to banks and this fact has been admitted by the AO himself. Accordingly it was argued that the business exigency warrants incurring expenses in cash. From the combined perusal of the documents submitted and considering the nature of business the assessee is engaged in we are of the view that there is merit in the claim that the business exigency warrants the payments to be made in cash. Further the Co-ordinate Bench in assessee's own case

for AY 2007-08 has considered the similar issue and has deleted the disallowance made under section 40A(3) by holding that –

“6. By giving the careful thoughts to the contentions raised by the representatives for the parties and perused the record carefully, the grounds which have been taken by the assessee are being decided accordingly.

Issue-I

It is required to be decided whether the Ld. CIT(A) has erred in deleting the disallowance of Rs.46,75,800/- made by the AO under section 40A(3) of the IT Act, 1961 being 20% of the expenditure incurred in cash. So far as the business of the assessee company is concerned, it is not disputed that the assessee company is engaged in the business of clearing agent (CHA), clearing, forwarding, speed money, transportation, loading and unloading for clients. Undoubtedly, the assessee company was incurring expenditure on behalf of its clients. The assessee company has shown the handling charges, transport charges, BPT charges, and gunny bag purchases. In fact, all these charges are belonging to the clients and the same cannot be said to be expenditure of the assessee company. The assessee company also explained in this regard that the company was utilizing the said amount for the payment of labour for job work, for stenciling done manually and high piling and speed money charges to the labour for speed delivery of the cargo. No doubt, to clarify the said expenditure the AO issued notice to the concerned companies but failed to receive the answer from the other companies but it cannot be the ground to disallow the expenditure incurred on behalf of the clients and add the same to the income of the assessee company. Moreover, no expenditure was claimed by the assessee company nor these amounts belong to the assessee company. Thereupon, the said situation, in our view section 40A(3) of the IT Act is not attracted in the hands of the assessee. Hence, the Ld. CIT(A) has rightly deleted the addition of Rs.46,75,800/- being 20% of the expenses. Similar situation is with the speed money regarding the issue No.2. The speed money is to be payable by the company to the labourers and others to achieve the result or to do the work at spot. This expenditure has also been incurred by the assessee company on behalf of its client. This amount has not been belonging to the assessee company and in this regard the company also reflected the said amount in its Profit and Loss account. As discussed above, section 40A(3) deals with the computing of income under the head of profit and gains of business and provision under section 40A(3) is one of the sub sections of section 40A and while computing the taxable income under the head of profit and gains of business then the provisions of section 40A(3) can be invoked. When there is no claim with regard to any expenditure, therefore

there should not be any disallowance in view of the provision under section 40A(3). In this regard, we also find the support of the law settled in (2010) 2 ITR 29 Trib.- Cochin.

7. As discussed above, when the expenditure is not related to the assessee company however executed on behalf of its client, then the question of application of the provisions of section 37(1) of the Income Tax Act, 1961 does not arise. Therefore, it is quite clear that the Ld. CIT(A) has rightly decided the issue numbers (1) & (2) in favour of the assessee which is not required to be interfered with at this stage. Hence, the finding of the Ld. CIT(A) under the issues number (1) & (2) are hereby affirmed.”

10. In view of the above discussion and respectfully following the decision of the Co-ordinate bench in assessee's own case for earlier years, we hold that no disallowance under section 40A(3) is warranted in assessee's case. Accordingly, the AO is directed the delete the disallowance made in this regard.

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

Order pronounced in the open court on 16-09-2024.

Sd/-
(KAVITHA RAJAGOPAL)
Judicial Member

Sd/-
(PADMAVATHY S)
Accountant Member

**SK, Sr. PS*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai