

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री एबी टी. वकी, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER
आयकर अपील सं./ITA Nos.1381, 1382 & 1383 /Chny/2023
निर्धारण वर्ष /Assessment Years: 2015-16, 2016-17 & 2017-18

Sree Muthu Dyers,
No.1, Bhavani Road,
R.N.Pudur Post,
Erode,
Tamil Nadu-638005.
[PAN: ACIFS5299K]

The Deputy Commissioner of Income
Tax,
Circle-1,
Erode

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri S.Sridhar, Advocate

प्रत्यर्थी की ओर से /Respondent by

: Shri Dr.Samuel Pitta, JCIT

सुनवाई की तारीख/Date of Hearing

: 21.08.2024

घोषणा की तारीख /Date of Pronouncement

: 25.10.2024

आदेश / ORDER

PER AMITABH SHUKLA, A.M :

These appeals are filed against the order bearing DIN & Order No.ITBA / NFAC / S / 250 / 2023-24 / 1056617279(1), No.ITBA / NFAC / S / 250 / 2023-24 / 1056616852(1), No.ITBA / NFAC / S / 250 / 2023-24 / 1056617069(1) dated 27.09.2023 of the Learned Commissioner of Income Tax [herein after "CIT(A), National Faceless Appeal Center[NFAC], Delhi, for the assessment years 2015-16, 2016-17 and 2017-18. Through the aforesaid appeals the assessee has challenged order u/s 250 dated 27.09.2023 passed by NFAC, Delhi.

2.0 It is noted that there is a common issue of disallowance u/s 40A(3) r.w. Rule-6DD of the act in ITA Nos.1381 to 1383 relevant for AY-2015-16 to 2017-18 and hence all the above appeals adjudicated with this common order. For the purposes of clarity and adjudication of the matter, figures for the year AY-2015-16 are taken as the same is considered as the lead year.

3.0 The Ld. Counsel for the assessee informed that the assessee had filed its return of income for AY-2015-16 declaring an income of Rs.45,55,591/-. The Ld. AO noted that the assessee had incurred an amount of Rs.69,62,000/- as water expenses out of which Rs.36,80,000/- was paid during the year. It was claimed that the water was purchased from five parties. The Ld. AO called three parties and recorded their statements. The parties could not give any information as to how water was arranged by them or details of their water supply business. Two parties stated that they were brokers. The Ld. AO noted that even though appellant claimed to have made them payments through banking, it had never reached their bank accounts. In response to the query the deponents informed that they had accepted post dated cheques and discounted the same for their personal needs. The Ld. AO concluded that even though water is critical to assessee's business and the incurring of expenses cannot be doubted but as the payments were not made by

account payee cheque, a presumption of violation of section 40A(3) was established in the case. The Ld. Counsel submitted that on account of crossed cheques the assessee has been held guilty of violation of provisions of 40A(3) which bars payment of moneys otherwise than by account payee cheques and treats such payments as cash payments. The Ld. Counsel submitted that the Ld. AO also held the view that the exceptions indicated in section 40A(3) were not attracted in assessee's case. The Ld. First Appellate Authority confirmed the findings of Ld. AO. While doing so, it was concluded that the element of business exigencies enshrined as an exception in Rule-6DD was unavailable in the present case and he proceeded to sustain the addition. The Ld. CIT(A) also rejected the judicial citation relied upon by the assessee. The Ld. Counsel for the assessee argued that its case is fully covered by the exceptions qua business exigencies enshrined as an exception in Rule-6DD and therefore the disallowance made by the Ld. AO is unwarranted. In support of its contentions, it relied upon the amendment made taxation laws (amendment) Act- 2006 and the CBDT circular No.1 of 2007 dated 27.04.2007. Providing a copy thereof it was argued that only the words "a Cross cheque drawn on a bank or a crossed bank draft" had been substituted by the words "an account payee cheque drawn on a bank or a account payee bank draft". The Ld. Counsel urged that pertinently the

genuineness of the expenses have not been doubted by the Ld. AO or the CIT(A). The Ld. Counsel informed that the account payee cheque issued by him meant inscribing two transverse lines on the top left corner of the cheque as against the alternative practice of writing “account payee only”. The appellant assessee submitted that the amounts issued to the respective parties have been mentioned in the debit side of its bank statement by the bank thus evidencing that there were no cash withdrawals and that the amounts have been transferred from assessee’s account to parties accounts. In support of its contentions provided through paper book copies of bank statements having customer ID 852525896 maintained with Axis Bank Erode, Tamil Nadu which showed that on different dates the cheques issued by the assessee qua the impugned water supplying parties were debited. In support of its contentions the appellant assessee has also placed reliance upon the decision of the Hon’ble Coordinate Bench of the Delhi Tribunal in ITA No.6115 / Del / 2018 and ITA No.4618 / Del / 2019 dated 15.06.2023 postulating that “business expediency” is inherent in Rule-6DD.

4.0 The Ld. DR insisted that to avoid extension of section 40A(3) the assessee was required to have issued account payee cheques and not crossed cheques. It is not a case of assessee issuing self cheques which were encashed by way of cash withdrawals by any person so as to attract

disallowance u/s 40A(3). It was accordingly argued that the appellant has not violated any provisions of section 40A(3) of making any cash payments and that therefore the disallowance made by the AO Rs.36,80,000/- be deleted. The Ld. DR stated that the cheques issued were only crossed cheques (containing two transverse lines on the top left) and not account payee cheques (containing inscription a/c payee on the top left) and therefore the disallowance u/s 40A(3) is correct.

5.0 We have heard rival submissions in the light of material available on records. The only controversy germane to the issue is that the assessee had issued cheques to the impugned parties by making two transverse lines on the top left corner of the cheque and deems the same as a conduct not violative of section 40A(3). On the other hand the Ld. AO has made the addition on the premise that the assessee was required to have made two transverse lines on the top left corner of the cheque and writing account payee. Thus the issue is as to what is the correct practice. We deem it fit to go into the principles of law which we think always takes precedence over everything else when there is a question of judicial interpretation. This brings us to the very question of placing section 40A(3) on the statute. We consider it necessary to reproduce the exact statutory provisions herein below:-

“...Where the assessee incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, 2[or use of electronic clearing system through a bank account, exceeds ten thousand rupees], no deduction shall be allowed in respect of such expenditure....” (the amount amended to Rs.20000/- subsequently)

6.0 A bare reading of the statute above says that in the event of a taxpayer incurring an expenditure exceeding Rs.20,000/- by a mode other than by an account payee cheque or bank draft or by way of an electronic clearing system no deduction shall be allowed qua the impugned expenses. The reverse logic embedded in the said statute is that cash payments only upto Rs.20000/- are allowed. The only logical legislative intent behind section 40A(3) appears to be to control or put a check upon rampant cash transactions which are beyond any effective and documented regulatory system. Thus when a payment is made by a mode of an account payee cheque or bank draft or by way of an electronic clearing system there is always a verifiable trail of two persons who are payer and payees of a transaction. These transactions are clear, candid and transparent transactions available for any verification for a long period of time. Contrary to this, in cash transactions there can

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always be an element of a difference between actual and reality. To illustrate a person can always claim to have paid someone an amount of money by cash, but in reality the same may not be true. Viewed in the above background it is noted that the provisions of 40A(3) has been made with the solitary objective of encouraging transactions through banking channels for establishing their authenticity. Thus 40A(3) presumes only two situation i.e either the expenditure has been incurred by cash or by a mode of an account payee cheque or bank draft or by way of an electronic clearing system. There cannot be a third proposition unless one ventures into the helm of system of barter.

7.0 We would now like to examine the banking provisions qua transactions undertaken through cheques. There are only two types of cheques, self or bearer cheques or account payee or crossed cheques. The former are basically cash withdrawal cheques which can be given to anybody with inscription "Bearer" or name of some person without making two transverse lines on the cheque. These cheques can be presented to the bank by the "Bearer" or named person and amount indicated can be encashed by way of cash withdrawal. In the case of account payee or crossed cheques which necessarily would require to have two transverse lines on the cheque or at least written "account payee" along with name

of some person, and amount can only be credited to the account of the person. There would not be any cash disbursal.

8.0 With the above understanding of the matter we do not find that the conduct of the appellant assessee falls into the mischief of provisions of section 40A(3). It is an admitted fact by the revenue that a cheque was issued which had two transverse lines on the cheque. The law mandates that the assessee for amounts exceeding Rs.20000/- and, with the objective of not falling into the mischief of provisions of section 40A(3), is required to incur its expenses by way of an account payee cheque or bank draft or by way of an electronic clearing system. Thus, there is no scope for any confusion in this case. We would also like to mention that the Ld. AO has neither doubted the genuineness of the expenditure nor the commercial expediency thereof. Accordingly in view of the fact that the Ld. AO has neither doubted the genuineness of the expenditure nor the commercial expediency thereof and the assessee has made payments by way of cheque having two transverse lines on top left and also the fact that the amounts of cheque have been credited, by the Bank, to the parties account by debiting assessee's own account, we hold that there has been no violation of section 40A(3) by the appellant assessee. We therefore set aside the order of Ld.AO and the Ld. CIT(A) with directions to the Ld. AO to delete the impugned addition of Rs.36,80,000/- for AY-

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2015-16. Accordingly, all the grounds of appeal raised by the assessee are allowed.

9.0 As stated above, ITA no. 1382 & 1383 for AY's 2016-17 & 2017-18 respectively have identical facts save for variations in figures. Accordingly, the decision taken in ITA no. 1381 for AY 2015-16 supra shall apply mutatis mutandis. Accordingly, all the grounds of appeal raised by the assessee qua these appeals are also allowed.

10.0 In the result the appeal raised by the assessee for ITA no 1381, 1382 & 1383 for AY's 2015-16, 2016-17 & 2017 respectively are allowed

Order pronounced on 25th, October-2024 at Chennai.

Sd/-

(एबी टी. वर्की)

(ABY T VARKEY)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य / **Accountant Member**

चेन्नई/Chennai, दिनांक/Dated: 25th, October- 2024.

KB/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT - Coimbatore
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF