

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'E', NEW DELHI**

**Before Sh. Satbeer Singh Godara, Judicial Member  
&  
Sh. M. Balaganesh, Accountant Member**

**ITA No. 729/Del/2020 : Asstt. Year : 2011-12**

M. M. Construction, C-81, Ashiyana Colony, Kanth Road, Moradabad-244001 (APPELLANT)	Vs	Income Tax Officer, Ward-1(1), Moradabad-244001 (RESPONDENT)
<b>PAN No. AAIFM1910H</b>		

**Assessee by : Sh. Akash Ojha, Adv.  
Revenue by : Sh. Akhilesh Kumar Yadav, Sr. DR**

<b>Date of Hearing: 02.12.2024</b>	<b>Date of Pronouncement: 05.12.2024</b>
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**ORDER**

**Per Satbeer Singh Godara, Judicial Member:**

This assessee's appeal for Assessment Year 2011-12, arises against the order of CIT(A), Moradabad dated 24.09.2019 in Appeal No. 134/ITO-1(1)/MBD/2017-18 in proceedings u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short "The Act").

2. Delay of 74 days of the instant appeal is condoned as per assessee's solemn averments in light of Collector Land Acquisition vs Mst. Katiji & Ors (1987) 167 ITR 471 (SC) having settled law long back that of such technical aspects must make a pay way for the cause of substantial justice.

3. We now advert to the first and foremost issue of section 40A(3) disallowance of Rs.66,22,650/- made by the Assessing Officer in his assessment order dated 22.12.2018 and upheld in the CIT(A)'s lower appellate findings reading as follows:

**"4.2 Disallowance u/s 40(A)(3) of the Income Tax Act, 1961:**

*It was noticed by the AO that the appellant made payments of the expenses to the tune of Rs. 79,47,650/- in contravention to the provisions of section 40(A)(3) of the Income Tax Act, 1961. Further, the appellant submitted during the assessment that amount of Rs. 13,25,000/- was made on holiday which was covered under rule 6DD(j) of the Income Tax Rule and balance amount of Rs. 66,22,650/- was covered under rule 6DD(k) of the Income Tax Rules. AO considered the reply of the appellant and found that the payment of Rs. 13,25,000/- was actually covered under rule 6DD(j) as all the payments were made on holidays but the balance amount of Rs. 66,22,650/- was not found to be covered under rule 6DD(k) because all these payments were made to the suppliers directly by the appellant and not by an agent.*

*Now, the appellant contended that the sum of Rs. 66,22,650/- was paid in cash due to business expediency. TIPS statement of the appellant has no force because on going through all the documents and submissions, it is held that the above-mentioned payments were made through bearer cheques through which the cash was withdrawn. It is also noticed that all the above-mentioned payments were made to the suppliers i.e. M/s Agarwal Cement Store, M/s Adil Cement Store, Shri Anil Kumar, Shri Anvaar (Trolley), M/s Arihant Traders, M/s Badesha Stone Crusher, M/s Bharat Iron Store, Shri Bhoora Contractor, M/s Deep Tiles Trading, Shri Dharampal Singh & M/s Good Luck Brick Works and not by an agent. Also, no supportive evidence is submitted by the appellant to substantiate his claim. Therefore, it is clear that this action was done deliberately, that all these payments were made by the bearer cheques and not made through account payee cheques or through other banking channels and hence, I am of the view that the action of the AO for disallowing of Rs. 66,22,650/- was correct and as per law. Appeal of the appellant fails on this ground."*

4. The Revenue vehemently contends that the assessee has neither proved any compelling reasons for having made the impugned cash payments in violation of section 40A(iii) r.w. Rule 6DD of the Income Tax Rules nor the circumstances herein warrant any inference with the learned lower authorities action

to this effect. Learned departmental representative seeks to buttress the point that the aim & objective of the impugned statutory provision is to control unaccounted money claimed as business deduction as per honourable apex court landmark decision in Attar Singh Gurmukh Singh Vs. ITO, 191 ITR 667 (SC).

5. We have given our thoughtful consideration to assessee's and Revenue's vehement contentions against and in support of the impugned disallowance and find no reason to sustain the same. We wish to make it clear that the assessee is in unorganized civil contractor activities wherein it had made payments to various suppliers which is nowhere been doubted in both the lower proceedings. The Revenue's only case in these facts and circumstances is that the relevant conditions in Rule 6DD(k) have not been fulfilled so as to satisfy the rigor of impugned statutory provision. We find that the case of CIT Vs. Anupam Tele Services Vs. ITO 361 ITR 1 (Gujarat) has settled the issue in assessee's favour and against the department that overwhelming genuine payments made in cash have nowhere been sought to be disallowed u/s 40A(3) of the Act. Their lordships further conclude that Rules 6DD of the Income Tax Rules is not a self-exhaustive provision wherein the assessee could very well plead and prove all the business/commercial exigencies for making such cash payments. We draw strong support therefrom to delete the impugned disallowance of Rs.66,22,650/- in very terms. The assessee's second substantive ground to this effect succeeds.

6. So far as the assessee's third substantive ground is concerned that the CIT(A)'s has not granted net profit relief of Rs.8,08,190/- wrongly adopted in the original assessment, we

find that the instant issue requires more factual verification than any substantive adjudication on our part. Ordered accordingly. Learned Assessing Officer shall finalize his consequential computation after necessary verification subject to a rider that the assessee shall plead and prove all the relevant facts at it's own risk and responsibility within three effective opportunities, in consequential proceedings.

7. Learned counsel does not press for assessee's section 148 reopening ground once we have already decided the foregoing twin issues in its favour. Rejected accordingly.

8. This assessee's appeal is allowed in above terms.  
Order Pronounced in the Open Court on 05/12/2024.

Sd/-

**(M. Balaganesh)**  
**Accountant Member**  
**Dated: 05/12/2024**

Sd/-

**(Satbeer Singh Godara)**  
**Judicial Member**

\*Subodh Kumar, Sr. PS\*  
Copy forwarded to:  
1. Appellant  
2. Respondent  
3. CIT  
4. CIT(Appeals)  
5. DR: ITAT

**ASSISTANT REGISTRAR**