

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, KOLKATA

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI PRADIP KUMAR CHOUBEY, JM**

**ITA No.1216 & 1217/KOL/2023
(Assessment Year:2015-16 & 2017-18)**

Awaz Devcon Pvt. Ltd.
Ankurhati, N.H.6, Opposite
Ludhiana Hotel, Domjur, Howrah-
711302, West Bengal

(Appellant)

ITO, Ward-14(4),
Aaykar Bhavan, Poorva, 110,
Shantipally, Kolkata-700107,
West Bengal

(Respondent)

PAN No. AAKCA2119F

Assessee by : Shri Abhishek Bansal, AR
Revenue by : Shri Arun Kanti Dutta, DR

Date of hearing: 16.01.2025
Date of pronouncement : 24.02.2025

ORDER

Per Rajesh Kumar, AM:

These are appeals preferred by the assessee against the orders of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") even dated 24.07.2023 for A.Ys. 2015-16 & 2017-18.

02. At the outset, we note that there is a delay of 53 days in filing these appeals by the assessee for which the assessee has filed a petitions for condonation of delay in which the assessee stated that the taxation matters could not be handled and attended due to certain unavoidable circumstances which were beyond the control of the assessee, which has resulted delay in filing the appeal of 53 days.



03. After hearing both the parties and perusing the materials available on record, we are of the view that the delay is sufficient and bonafide reasons and therefore, the delays are condoned by admitting these appeals for adjudication.

ITA No. 1217/KOL/2023 for A.Y. 2015-16

04. The only issue raised and pressed at the time of hearing is against the order of Id. CIT (A) upholding the assessment order, wherein the Id. AO has made the addition of ₹3,14,43,700/- by invoking the provisions of Section 40A(3) of the Act.

05. The facts in brief are that the assessee filed the return of income on 30.09.2015, declaring total income at ₹10,81,150/-, which was processed u/s 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny and statutory notices were duly issued and served upon the assessee along with questionnaire. Pertinent to state that assessee was engaged in the business of purchase and sale of lands/ plots which were duly recorded in the books of accounts maintained and audited by the auditors of the assessee. The land purchased by the assessee was held as stock-in-trade for which the payments were made in cash as well as by cheques. The Id. AO perused from the tax audit report in form no.3CEB filed by the assessee that payments toward purchase of land/plots/expenses made/incurred which are covered u/s 40A(3) of the Act. Accordingly, the assessee was asked to produce the copies of deeds of conveyance which were executed during the relevant financial year and the assessee accordingly, furnished the same before the Id. Assessing Officer. The Id. AO on perusal of the deeds for purchase of land/plots noted that assessee has made payments in



excess of ₹20,000/- on a single day which were duly reflected in the deeds of conveyance as executed by the assessee. Thereafter the Id. AO referred to the tax audit report in form No.3CED in column no.21(d)(a) which is meant for disallowance / deemed income u/s 40A(3) of the Act which deals with the expenses incurred by the assessee and whether the same are covered u/s 40A(3) of the Act read with Rule 6D of the Rules or were made by account payee cheques drawn in favour of the payee and if these were not so furnished the details. Thereafter in para 2, the Id. AO extracted the details of such payments aggregating to ₹2,37,93,253/-. The Id. AO also issued summon u/s 131 of the Act to the directors of the assessee company and accordingly, the statement of Shri Gopal Shah and Safiqul Hussain Laskar were recorded u/s 131 of the Act under oath on 22.12.2017. In the said statements it was stated that payments were made to the vendors for purchase of land/plots, who insisted on making the payments in cash as well as by cheques and therefore, payments were made under compulsion and commercial expediency and therefore are covered under the explanation to Rule 6DD of the IT Rules 1962. The AO brushed aside the assessee's contentions and finally held the amount of ₹2,37,97,293/- to be not allowable u/s 40A(3) of the Act. Similarly, the Id. AO on perusal of the tax audit report from column no.21(d)(a) observed that assessee made payments in cash on a single day in excess of ₹20,000/- against purchase of land/plots and registration thereof which aggregated to ₹73,48,109/-. Similarly, the Id. AO noted that the assessee has made cash payments of ₹20,000/- in respect of business promotion which aggregated to ₹2,98,298/-. Accordingly, the assessment was framed



u/s 143(3) of the Act dated 30.12.2017 making addition of ₹3,14,43,700/- u/s 40A(3) of the Act.

06. In the appellate proceedings, the Id. CIT (A) simply confirmed the order of the Id. AO. The Id. CIT (A) in the appellate proceedings dismissed the appeal of the assessee by giving a cryptic finding in Para no.6.10 of the appellate order that there is no infirmity in the actions of the AO in disallowing the payments in excess of Rs. 20,000/- aggregating to ₹3,14,43,700/- under the provisions of Section 40A(3) of the Act.

07. After hearing the rival contentions and perusing the materials available on record, we find that assessee is engaged in the business of purchases and sale of land/plots. The assessee has purchase lands/plots during the instant financial year for which various sale deeds were executed. The payments were made partly in cash and partly by cheques, which were duly disclosed in the deeds of conveyance. The books of accounts of the assessee were also audited and assessee filed the audited accounts along with audited report before the Id. Assessing Officer. The Id. AO on the basis of the said audit report observed that tax auditor has reported 3 payments in the tax audit report which were not allowable in terms of Section 40A(3) of the Act; i.e. (i) cash component paid as per sale deeds as details given by the Id. AO in para no.2 which aggregating to ₹2,37,97,293/- (ii) the amount of payments made to various persons in connection with the purchase of land/plots and registration charges which aggregated to ₹73,48,109/- and (iii) the payments made on account of various expenses incurred such as business promotion and miscellaneous expenses aggregating to ₹ 2,98,298/-. We note that



the explanation of the assessee before the lower authorities was that since the land/plots were purchased in the rural area and therefore, the sellers of the land/plots who were residents of villages, refused to accept the entire payments in cash and therefore, the payment had to be made in two components i.e. cash as well as by cheques. We note that both these payments were duly disclosed in the sale deeds of the assessee. Similarly, the expenses incurred in connection with purchase of land/plots and registration charges aggregating to ₹73,48,109/- were incurred in cash and same was the position qua the other expenses such as bricks, business promotion and business expenses which were also incurred in the excess of 20,000/-. So far as payments for purchase of plots ₹2,37,97,293/- and registration ₹73,48,109/- are concerned, We are quite convinced that the said payments are covered in the explanation as provided in the Rule 6DD of the Rules. We note that the provisions of Section 40A(3) of the Act imposed embargo on cash payments in excess of ₹20,000/- during the financial year, however taking into consideration practical difficulties, certain exceptions have been carved out or provided in Rule 6DD of the Rules. We also note that the AO has not disputed the identity of the persons to whom the payments were made and same was the position with regards to genuineness of the transactions but only harped on the fact that payments were made in excess of 20,000/-. The case of the assessee is covered by the decision of co-ordinate Bench in case of M/s A Daga royal Arts Vs. ITO in ITA No. 1065/JP/2016, vide order dated 15.05.2018, wherein the co-ordinate bench has held as under:-

"18. We have heard the rival contentions and perused the material available on record. It would be relevant to refer to the provisions of section 40A(3) of the Act which reads as under:



'(3) 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 exceeds twenty thousand rupees, no deduction shall be allowed in respect of such expenditure.

(3A) Where an allowance has been made in the assessment for any year in respect of any liability incurred by the assessee for any expenditure and subsequently during any previous year (hereinafter referred to as subsequent year) the assessee makes payment in respect thereof, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, the payment so made shall be deemed to be the profits and gains of business or profession and accordingly chargeable to income-tax as income of the subsequent year if the payment or aggregate of payments made to a person in a day, exceeds twenty thousand rupees:

Provided that no disallowance shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-section (3) and this sub-section where 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 exceeds twenty thousand rupees, in such cases and under such circumstances as may be prescribed, having regard to the nature and extent of banking facilities available, considerations of business expediency and other relevant factors :

Provided further that in the case of payment made for plying, hiring or leasing goods carriages, the provisions of sub-sections (3) and (3A) shall have effect as if for the words "twenty thousand rupees", the words "thirty-five thousand rupees" had been substituted.

(4) Notwithstanding anything contained in any other law for the time being in force or in any contract, where any payment in respect of any expenditure has to be made by an account payee cheque drawn on a bank or account payee bank draft in order that such expenditure may not be disallowed as a deduction under sub-section (3), then the payment may be made by such cheque or draft; and where the payment is so made or tendered, no person shall be allowed to raise, in any suit or other proceeding, a plea based on the ground that the payment was not made or tendered in cash or in any other manner.'

19. The aforesaid provisions have to be considered and interpreted in light of various authorities which have been quoted at the Bar and relied upon by the Id AR and Id DR in support of their respective contentions.

20. In case of Attar Singh Gurmukh Singh (supra), the matter which came up for consideration before the Hon'ble Supreme Court, the facts of the case were that assessee had made payment in cash exceeding a sum of Rs. 2,500/- for purchase of certain stock-in-trade. Payments were not allowed as deductions in the computation of income under the head "profits and gains of business or professions" as the same were held to be in contravention of section 40A(3) read with that 6DD of the Income rules.



In that factual background, the question regarding validity of section 40A(3) and applicability of the said provisions to payment made for acquiring stock-in-trade came up for consideration before the Hon'ble Supreme Court.

21. The Hon'ble Supreme Court referring to the provisions of section 40A(3) and Rule 6DD and in particular, Rule 6DD(j), as existed at relevant point in time, has held as under:—

"6. As to the validity of section 40A(3), it was urged that if the price of the purchased material is not allowed to be adjusted against the sale price of the material sold for want of proof of payment by a crossed cheque or crossed bank draft, then the income-tax levied will not be on the income but it will be on an assumed income. It is said that the provision authorizing levy tax on an assumed income would be a restriction on the right to carry on the business, besides being arbitrary.

7. In our opinion, there is little merit in this contention. Section 40A(3) must not be read in isolation or to the exclusion of rule 6DD. The section must be read along with the rule. If read together, it will be clear that the provisions are not intended to restrict the business activities. There is no restriction on the assessee in his trading activities. Section 40A(3) only empowers the Assessing Officer to disallow the deduction claimed as expenditure in respect of which payment is not made by crossed cheque or crossed bank draft. The payment by crossed cheque or crossed bank draft is insisted on to enable the assessing authority to ascertain whether the payment was genuine or whether it was out of the income from disclosed sources. The terms of section 40A(3) are not absolute. Consideration of business expediency and other relevant factors are not excluded. The genuine and bona fide transactions are not taken out of the sweep of the section. It is open to the assessee to furnish to the satisfaction of the Assessing Officer the circumstances under which the payment in the manner prescribed in section 40A(3) was not practicable or would have caused genuine difficulty to the payee. It is also open to the assessee to identify the person who has received the cash payment. Rule 6DD provides that an assessee can be exempted from the requirement of payment by a crossed cheque or crossed bank draft in the circumstances specified under the rule. It will be clear from the provisions of section 40A(3) and rule 6DD that they are intended to regulate the business transactions and to prevent the use of unaccounted money or reduce the chances to use black-money for business transactions. - Mudiam Oil Co. v. ITO [1973] 92 ITR 519 (AP). If the payment is made by a crossed cheque on a bank or a crossed bank draft, then it will be easier to ascertain, when deduction is claimed, whether the payment was genuine and whether it was out of the income from disclosed sources. In interpreting a taxing statute the Court cannot be oblivious of the proliferation of black-money which is under circulation in our country. Any restraint intended to curb the chances and opportunities to use or create black-money should not be regarded as curtailing the freedom of trade or business."



22. Further, the Hon'ble Supreme Court upheld the applicability of section 40A(3) to payment made for acquiring stock-in-trade and raw materials and also affirmed the decision of Hon'ble Rajasthan High Court in case of *Fakri Automobiles v. CIT* [1986] 24 Taxman 578/160 ITR 504 (Raj) to the effect that the payments made for purchasing stock-in-trade or raw material should also be regarded as expenditure for the purposes of section 40A(3) of the Act.

23. The Hon'ble Supreme Court has therefore upheld the constitutional validity of section 40A(3) of the Act and has held that the provisions are not intended to restrict the business activities and restraint so provided are only intended to curb the chances and opportunities to use or create black money and the same should not be regarded as curtailing the freedom of trade or business. The Hon'ble Supreme Court has thus laid great emphasis on the intention behind introduction of these provisions and it would therefore be relevant to examine whether in the present case, there is any violation of such intention and if ultimately, it is determined that such intention has been violated, then certainly, the assessee deserves the disallowance of the expenditure so claimed.

24. The Hon'ble Supreme Court referring to the provisions of section 40A(3) as existed at relevant point in time which talks about considerations of business expediency and other relevant factors and Rule 6DD(j) which provides for the exceptional or unavoidable circumstances and the fact that the payment in the manner aforesaid was not practical or would have caused genuine difficulty to the payee and furnishing the necessary evidence to the satisfaction of the Assessing Officer as to the genuineness of the payments and the identity of the payee has held that:

"The terms of section 40A(3) are not absolute. Consideration of business expediency and other relevant factors are not excluded. The genuine and bona fide transactions are not taken out of the sweep of the section. It is open to the assessee to furnish to the satisfaction of the Assessing Officer the circumstances under which the payment in the manner prescribed in section 40A(3) was not practicable or would have caused genuine difficulty to the payee. It is also open to the assessee to identify the person who has received the cash payment. Rule 6DD provides that an assessee can be exempted from the requirement of payment by a crossed cheque or crossed bank draft in the circumstances specified under the rule."

25. Here, it is relevant to note that there has been no change in the provisions of section 40A(3) in so far as considerations of business expediency and other relevant factors are concerned, as existed at relevant point in time and as considered by the Hon'ble Supreme Court and the provisions of section 40A(3) as exist now and relevant for the impugned assessment year i.e. AY 2013-14. However, Rule 6DD(j) has been amended and by notification dated 10.10.2008, it now provides for an exception only in a scenario where the payment was required to be made on a day on which banks were closed either on account of holiday or strike. A question which arises for consideration is whether the legal proposition so laid down by the Hon'ble Supreme Court regarding consideration of business expediency and other relevant factors has been diluted by way of delegated legislation in form of Income Tax Rules when the



parent legislation in form of section 40A(3) to which such delegated legislation is subservient has been retained in its entirety. Alternatively, can it be said that what has been prescribed as exceptional circumstances in Rule 6DD as amended are exhaustive enough and which visualizes all kinds and nature of business expediency in all possible situations.

26. If we look at the legislative history of section 40A(3) and Rule 6DD, we find that initially, section 40A(3) provides for disallowance of 100% of the expenditure unless the matter falls under exception as provided in Rule 6DD(j) Later on, section 40A(3) has been amended to provide for disallowance of 20% of the expenditure incurred in cash and Rule 6DD(j) was omitted. Thereafter, by virtue of another amendment, disallowance under section 40A(3) was increased from 20% to 100%, however, Rule 6DD(j) was not reintroduced in original form to provide for exceptional and unavoidable circumstances rather it was restricted to payment by way of salary to employees and thereafter, by virtue of latest amendment in year 2008 to payments made on a day on which the banks were closed on account of holiday or strike.

27. We do not believe that by virtue of these amendments, the legal proposition so laid down by the Hon'ble Supreme court regarding consideration of business expediency and other relevant factors has been diluted in any way. At the same time, we also believe that Rule 6DD as amended are not exhaustive enough and which visualizes all kinds and nature of business expediency in all possible situations and it is for the appropriate authority to examine and provide for a mechanism as originally envisaged which provides for exceptional or unavoidable circumstances to the satisfaction of the Assessing officer whereby genuine business expenditure should not suffer disallowance.

28. Further, the Courts have held from time to time that the Rules must be interpreted in a manner so as to advance and not to frustrate the object of the legislature. The intention of the legislature is manifestly clear and which is to curb the chances and opportunities to use or create black money and to ascertain whether the payment was genuine or whether it was out of the income from disclosed sources. And Section 40A(3) continues to provide that no disallowance shall be made in such cases and under such circumstances as may be prescribed having regard to the nature and extent of the banking facilities available, consideration of business expediency and other relevant factors. In our view, given that there has been no change in the provisions of section 40A(3) in so far as consideration of business expediency and other relevant factors are concerned, the same continues to be relevant factors which needs to be considered and taken into account while determining the exceptions to the disallowance as contemplated under section 40A(3) of the Act so long as the intention of the legislature is not violated. We find that our said view find resonance in decisions of various authorities, which we have discussed below and thus seems fortified by the said decisions.

29. We refer to the decision of the Hon'ble Rajasthan High Court in case of Smt. Harshila Chordia (*supra*), where the facts of case were that the assessee had made certain cash payments towards purchase of scooter/mopeds which exceeded Rs. 10,000/- in each case to the principal agent instead of making payment through the



cross cheques or bank draft. The Assessing Officer invoked the provisions of section 40A(3) and held that they were no exceptional circumstances falling under rule 6DD which could avoid consequences of the provisions of section 40A(3) of the Act. The Id. CIT (A) held that such exceptional circumstances did exist. However, the findings of the Id. CIT (A) were reversed by the Tribunal and the matter came up for consideration before the Hon'ble High Court.

30. The Hon'ble High Court observed that the principal reason which weighed with the Tribunal in discarding the explanation furnished by the assessee was that the case of the assessee did not fall in any of the clauses enumerated in the circular issued by the CBDT about the explanatory note appended to clause (j) was to operate as it was existing at the relevant time and enumerated circumstances in the circular was exhaustive of exceptional circumstances. The Hon'ble High Court observed that the Tribunal has erroneously assumed that enumeration of instances in the circular in which the provisions of clause (j) under rule 6DD would operate to be exhaustive of such circumstances and had not been properly understood its implication. It was further observed by the Hon'ble High Court that primary object of enacting section 40A(3) in its original incarnation was two-fold, firstly, putting a check on trading transactions with a mind to evade the liability to tax on income earned out such transaction and, secondly, to inculcate the banking habits amongst the business community. The consequence which was provided was to disallow of deduction of such payments/expenses which were not through bank either by crossed cheques or by demand draft or by pay order. It was further held by the Hon'ble High Court that:

".....Apparently, this provision was directly related to curb the evasion of tax and inculcating the banking habits. Therefore, the consequences, which were to befall on account of non-observation of sub-section (3) of section 40A must have nexus to the failure of such object. Therefore the genuineness of the transactions and it being free from vice of any device of evasion of tax is relevant consideration which has been overlooked by the Tribunal."

31. It was accordingly held by the Hon'ble High Court that it is the relevant consideration for the assessing authority under the Income Tax Act that before invoking the provisions of section 40A(3) in light of Rule 6DD as clarified by circular of the CBDT that whether the failure on the part of the assessee in adhering to requirement of provisions of section 40A(3) has any such nexus which defeats the object of provision so as to invite such a consequence. This is particularly so, because the consequence provided u/s 40A(3) for failure to make payments through bank is not absolute in terms nor automatic but exceptions have been provided and leverage has been left for little flexing by making a general provision in the form of clause (j) in rule 6DD. Thereafter, the Hon'ble High Court refers to the clause 6DD(j) and the circular dated 31st May, 1977 issued by the Board in the context of what shall constitute exceptional and unavoidable circumstances within the meaning of section Clause (j). The Hon'ble High Court observed that the circular in paragraph 5 gives a clear indication that rule 6DD(j) has to be liberally construed and ordinarily where the genuineness of the transaction and the payment and the identity of the receiver is established, the requirement of rule 6DD(j) must be deemed to have been satisfied. The Hon'ble High Court observed that apparently section 40A(3) was intended to



penalize the tax evader and not the honest transactions and that is why after framing of rule 6DD(j), the Board stepped in by issuing the aforesaid circular and this clarification, in our opinion, is in conformity with the principle enunciated by the Supreme Court in CTO v. Swastik Roadways [2004] 3 SCC 640.

32. The legal proposition that arises from the above decision of the Hon'ble Rajasthan High Court is that the consequences, which were to befall on account of non-observation of sub-section (3) of section 40A must have nexus to the failure of such object. Therefore the genuineness of the transactions and it being free from vice of any device of evasion of tax is relevant consideration and which should be examined before invoking the rigours of section 40A(3) of the Act.

33. In case of Anupam Tele Services the matter which came up for consideration before the Hon'ble Gujarat High Court, the facts of the case were that the assessee who is involved in the business of distribution mobile and recharge vouchers of Tata Tele Services Ltd had made payment of Rs. 33,10,194/- to Tata Tele Services Ltd., by cash on different dates. The assessee had made such payment through account payee cheques till 22nd Aug, 2005, when a circular was issued by Tata Tele Services Ltd., requiring the appellant to deposit cash at the company's office at Surat. In that factual background , the Hon'ble High Court held as under:—

"17. Rule 6DD of the IT Rules, 1962 provides for situations under which disallowance under s. 40A(3) shall not be made and no payment shall be deemed to be the profits and gains of business or profession under the said section. Amongst the various clauses, cl. (j) which is relevant, read as under:

(j) where the payment was required to be made on a day on which the banks were closed either on account of holiday or strike;

18. It could be appreciated that s. 40A and in particular sub-cl. (3) thereof aims at curbing the possibility of on-money transactions by insisting that all payments where expenditure in excess of a certain sum (in the present case twenty thousand rupees) must be made by way of account payee cheque drawn on a bank or account payee bank draft.

19. As held by the Apex Court in case of Attar Singh Gurmukh Singh (supra).
"..In our opinion, there is little merit in this contention. Sec. 40A(3) must not be read in isolation or to the exclusion of r. 6DD. The section must be read along with the rule. If read together, it will be clear that the provisions are not intended to restrict the business activities. There is no restriction on the assessee in his trading activities. Sec. 40A(3) only empowers the A.O. to disallow the deduction claimed as expenditure in respect of which payment is not made by crossed cheque or crossed bank draft. The payment by crossed cheque or crossed bank draft is insisted on to enable the assessing authority to ascertain whether the payment was genuine or whether it was out of the income from undisclosed sources, The terms of s. 40A(3) are not absolute. Considerations of business expediency and other relevant factors are not excluded. Genuine and bona fide transactions are not taken out of the sweep of the section. It is open to the assessee to furnish to the satisfaction of the A.O.



the circumstances under which the payment in the manner prescribed in s. 40A(3) was not practicable or would have caused genuine difficulty to the payee. It is also open to the assessee to identify the person who has received the cash payment. Rule 6DD provides that an assessee can be exempted from the requirement of payment by a crossed cheque or crossed bank draft in the circumstances specified under the rule. It will be clear from the provisions of s. 40A(3) and r. 6DD that they are intended to regulate business transactions and to prevent the use of unaccounted money or reduce the chances to use black money for business transactions:"

20. It was because of these considerations that this Court in case of Hynoup Foods (P.) Ltd. (supra) observed that the genuineness of the payment and the identify of the payee are the first and foremost requirements to invoke the exceptions carved out in r. 6DD(j) of the IT Rules,1962.

21. In the present case, neither the genuineness of the payment nor the identity of the payee were in any case doubted. These were the conclusions on facts drawn by the CIT(A). The Tribunal also did not disturb such facts but relied solely on r. 6dd(j) of the rules to hold that since the case of the assessee did not fall under the said exclusion clause nor was covered under any of the clauses of r. 6DD, consequences envisaged in s. 40A(3) of the Act must follow.

22. In our opinion, the Tribunal committed an error in coming to such a conclusion. We would base our conclusions on the following reasons:

(a) The paramount consideration of section 40A(3) is to curb and reduce the possibilities of black money transactions. As held by the Supreme Court in Attar Singh Gurmukh Singh (supra), section 40A(3) of the Act does not eliminate considerations of business expediencies.

(b) In the present case, the appellant assessee was compelled to make cash payments on account of peculiar situation. Such situation was as follow-

(i) the principal company, to which the assessee was a distributor, insisted that cheque payment from a co-operative bank would not do, since the realization takes a longer time;

(ii) the assessee was, therefore, required to make cash payments only;

(iii) Tata Tele Services Ltd. assured the assessee that such amount shall be deposited in their bank account on behalf of the assessee;

(iv) It is not disputed that the Tata Tele Services Ltd. did not act on such promise;

(v) if the assessee had not made cash payment and relied on cheque payments alone, it would have received the recharge vouchers delayed by 4/5 days and thereby severely affecting its business operations.

We would find that the payments between the assessee and the Tata Tele Services Ltd. were genuine. The Tata Tele Services Ltd. had insisted that such payments be made in cash, which Tata Tele Services Ltd. in turn assured and deposited the amount in a bank account. In the facts of the present case, rigors of s. 40A(3) of the Act must be lifted.

23. We notice that the Division Bench of the Rajasthan High Court in case of *Smt. Harshila Chordia v. ITO (2007) 208 CTR (Raj)* had observed that the exceptions contained in r. 6DD are not exhaustive and that the said rule must be interpreted liberally."

34. In case of *Ajmer Food Products (P.) Ltd. v. JCIT [IT Appeal No. 625 (jp) of 2014, dated 28-9-2016]* a similar issue has come up before the Co-ordinate Bench and speaking through one of us, it was held as under:

"4.5 The genuineness of the transaction as well as the identity of the payee are not disputed. Further, the appellant has explained the business expediency of making the cash payments to both the parties which has not been controverted by the Revenue. Following the decision of Gujarat High Court in case of *Anupam Tele Services (supra)* and Rajasthan High Court in case of *Harshila Chordia (supra)*, the addition of Rs. 45,738/- under section 40A(3) is deleted."

35. In case of *Gurdas Garg (supra)*, the matter which came up for consideration before the Hon'ble Punjab & Haryana High Court, the facts of the case are *pari materia* to the instant case and the ratio of the said decision clearly applies in the instant case. In that case, the facts of the case were that the assessee was engaged in trading in properties and during the course of assessment proceedings, the AO observed that there are transactions where the payments have been made in excess of Rs. 20,000/- in cash which were disallowed u/s 40A(3) of the Act. The Hon'ble High Court held that rule 6DD(j) is not exhaustive of the circumstances in which the proviso to section 40A(3) is applicable and it only illustrative. The Hon'ble High Court refers to the decision of the Hon'ble Rajasthan High Court in case of *Smt. Harshila Chordia (supra)* and the decision of Hon'ble Supreme Court in case of *Attar Singh Gurmukh Singh (supra)*. The High Court further observed that the Id. CIT(A) has given a finding that the identity of the payee i.e. vendors in respect of land purchase by the appellant was established, the sale deeds were produced, the genuineness thereof was accepted and the amount paid in respect of each of these agreement was satisfied before the Stamp Registration Authority and the transactions were held to be genuine and the bar against the grant of deductions u/s 40A(3) of the Act was not attracted. The Hon'ble High Court further observed that the Tribunal did not upset these findings including as to the genuineness and the correctness of the transactions and it is also important to note that the Tribunal noted the contention on behalf of the appellant that there was a boom in the real estate market and therefore it was necessary, therefore, to conclude the transactions at the earliest and not to postpone them; that the appellant did not know



the vendors and obviously therefore, insisted for payment in cash and that as a result thereof, payments had to be made immediately to settle the deals. The Tribunal did not doubt this case. The Tribunal, however, held that the claim for deduction was not sustainable. In view of Section 40A(3) as the payments which were over Rs. 20,000/- were made in cash. The Hon'ble High Court accordingly observed that "the Tribunal has not disbelieved the transactions or the genuineness thereof nor has it disbelieved the fact that payments having been made. More importantly, the reasons furnished by the appellant for having made the cash payments, which we have already adverted to, have not been disbelieved. In our view, assuming these reasons to be correct, they clearly make out a case of business expediency."

36. The Co-ordinate Bench in case of Dhuri Wine v. Dy. CIT [2017] 83 taxmann.com 20 (Chd. - Trib.) has held that the proposition so laid down by the Hon'ble High Court in case of Gurdas Garg (supra) is quite unambiguous to the effect that even if the case of the assessee does not fall in any of the clauses of Rule 6DD of the Income Tax Rules, invoking the provisions of section 40A(3) of the Act can be dispensed with if the assessee is able to prove the business expediency because of which it has to make the cash payments, the genuineness of the transactions have also to be verified.

37. The Co-ordinate Bench in case of Rakesh Kumar v. Asstt. CIT [IT Appeal No. 102 (Asr.) of 2014, dated 09-03-2016] relying on the decision of Hon'ble Punjab and Haryana High Court in case of Gurdas Garg (supra) has held that the genuineness of the payment has not been doubted as the Assessing Officer himself has held that sale deeds of properties were registered with the Revenue department of the Government. Therefore, following the decision of Hon'ble Punjab and Haryana High Court, the payment for purchase of land was allowed.

38. We further note that in case of ACE India Abodes limited [DB Appeal No. 45/2012, dated 11-09-2017], a similar issue has come up before the Hon'ble Rajasthan High Court regarding payment for purchase of land from various agriculturist for which the assessee has paid consideration in cash and shown the land as its stock-in-trade. The Hon'ble Rajasthan High Court referring to the intent behind introduction of section 40A(3) and catena of decisions right from Attar Singh Gurmukh Singh, Smt. Harshila Chordia, Gurdas Garg, Anupam Tele Services referred supra has decided the issue in favour of the assessee and against the department.

39. The issue which is being disputed before us has to be considered and decided in light of facts on record and the legal position which emerges from the above referred decisions. The facts of the case are that during the year under consideration, the assessee firm has purchased 26 pieces of plot of land in the month of April and May, 2012 from various persons for a total consideration of Rs. 2,46,28,425/-, out of which payment amounting to Rs. 1,71,67,000/- were made in cash to various persons, payment amounting to Rs. 59,48,920/- were made in cheque to various persons, and Rs. 8,15,700/- and Rs. 6,84,296/- were paid in cash towards stamp duty and court fee respectively. During the course of assessment proceedings, the assessee submitted copies of the sale deed, the particulars of which find mention on page 7 and 8 of the assessment order. On perusal of the said details, it is observed that the said details contains the name of the seller, date of sale deed, plot no., purchase value, stamp



duty, Court fee and mode of payment - cash/cheque. Therefore, as far as the identity of the persons from whom the purchases have been made and genuineness of the transactions of purchase of various plots of land and payment in cash is concerned, the same is evidenced by the registered sale deeds and there is no dispute which has been raised by the Revenue either during the assessment proceedings or before us. The identity of the sellers and genuineness of the transactions is therefore fully established in the instant case.

40. From perusal of the assessment order, it is further noted that the AO, on perusal of the details of the properties purchased, as per copies of the sale deed furnished, held that the assessee had made cash payments regularly and no specific circumstances have been brought to his knowledge that the cash payments were made due to some unavoidable circumstances. It was held by the AO that maximum cash payments were made to persons residing in Jaipur city and in single family, repeated cash payments were made which itself shows that there were no unavoidable circumstances to make cash payments to the sellers. What is therefore relevant to note that the AO has appreciated the necessity of determining the unavoidable circumstances which could have led the assessee to make cash payments. During the course of assessment proceedings, it was submitted by the assessee that the payment for purchase of land has been made in cash because the sellers were new to the assessee and refused to accept the cash. It was submitted that the delay in making the cash payment, it could have lost the land deals. In this regard, the Id AR submitted before us that the assessee had purchased the lands both through cash and cheques. Based on the requirement of the seller, assessee had selected the mode of payment. For the sellers, who had insisted the payments in cash, assessee had withdrawn the cash from bank on the same date of registry and made the payments to seller accordingly. The withdrawals from bank and payments to seller have been tabulated below as per dates below:—



Date	Bank		Grand Total	Cumulative balance	Utilization		Net Balance 18,00,000
	ICICI Bank	Yes Bank			Date	Amount	
5-Apr-12	14,50,000	3,50,00	18,00,000	18,00,000			5,07,00
9-Apr-12	-	9,00,000	9,00,000	27,00,000	9-Apr-12	21,93,000	3,34,000
11-Apr-12	-	2,00,000	2,00,000	29,00,000	11-Apr-12	3,73,000	3,34,000
12-Apr-12	-	-	-	29,00,000	-	-	3,34,000
13-Apr-12	-	-	-	29,00,000	-	-	11,97,100
19-Apr-12	-	30,00,000	30,00,000	59,00,000	23-Apr-12	21,36,900	11,57,000
24-Apr-12	30,00,000	25,00,000	55,00,000	1,14,00,000	24-Apr-12	55,40,100	11,57,000
25-Apr-12	-	-	-	1,14,00,000	-	-	11,57,000
30-Apr-12	-	-	-	1,14,00,000	-	-	11,57,000
4-May-12	-	-	-	1,14,00,000	-	-	11,57,000
7-May-12	-	-	-	1,14,00,000	-	-	11,57,000
8-May-12	19,00,000	23,00,000	42,00,000	1,56,00,000	8-May-12	38,55,000	15,02,000
12-May-12	-	-	-	1,56,00,000	-	-	15,02,000
14-May-12	-	-	-	1,56,00,000	-	-	15,02,000
15-May-12	-	-	-	1,56,00,000	-	-	15,02,000
16-May-12	-	15,00,000	15,00,000	1,71,00,000	-	-	30,02,000
17-May-12	-	15,00,000	15,00,000	1,86,00,000	17-May-12	30,69,000	14,33,000
Total	63,50,000	1,42,50,000	1,86,00,000			1,71,67,000	

41. It was submitted by the Id AR that in order to secure the deal, assessee had no other option but to make the payment in cash. Cash payments were made from the disclosed sources being the amount withdrawn from bank. It was for sheer insistence of the seller that the payments were made in cash. Had the assessee denied the cash payment looking to the provisions of sections 40A(3), the deal could not have been finalized. In such circumstances, in the business interest and to complete the deal, the assessee had chosen to make the payments in cash fortified through registered sale deed. The payment has been made out of the explained sources, through the registered document and as a disclosed transaction.

42. We find force in the contentions so raised by the Id AR. The transactions have been executed by the assessee within a span of one and half month and there are transactions where the payment has been made through cheque and there are transactions where the payment has been made through cash. The said contentions are supported by the fact that on the same day, there are cash and cheque payments as evidenced from the details of the transactions appearing at page 7 and 8 of the assessment order. It is therefore clear that the assessee was having sufficient bank balance and only at the insistence of the specific sellers, the assessee has withdrawn cash and made payment to them and wherever, the seller has insisted on cheque payments, the payment has been made by cheque. This makes out a case that the assessee has business expediency under which it has to make payment in cash and in



absence of which, the transactions could not be completed. The second proviso to section 40A(3) refers to "the nature and extent of banking facility, consideration of business expediency and other relevant factors" which means that the object of the legislature is not to make disallowance of cash payments which have to be compulsory made by the assessee on account of business expediency. Further, the source of cash payments is clearly identifiable in form of the withdrawals from the assessee's bank accounts and the said details were submitted before the lower authorities and have not been disputed by them. It is not the case of the Revenue either that unaccounted or undisclosed income of the assessee has been utilised in making the cash payments.

43. In the entirety of facts and circumstances of the case and respectfully following the legal proposition laid down by the various Courts and Coordinate Benches referred supra, we are of the view that the identity of the persons from whom the various plots of land have been purchased and source of cash payments as withdrawals from the assessee's bank account has been established. The genuineness of the transaction has been established as evidenced by the registered sale deeds and lastly, the test of business expediency has been met in the instant case. Further, as held by the Hon'ble Rajasthan High Court in case of Smt. Harshila Chordia (supra), the consequences, which were to befall on account of non-observation of sub-section (3) of section 40A must have nexus to the failure of such object. Therefore the genuineness of the transactions and it being free from vice of any device of evasion of tax is relevant consideration. The intent and the purpose for which section 40A(3) has been brought on the statute books has been clearly satisfied in the instant case. Therefore, being a case of genuine business transaction, no disallowance is called for by invoking the provisions of section 40A(3) of the Act.

In the result, the appeal of the assessee is allowed."

We note that it is not the case of the AO that the cash payments were not genuine and intended to evade taxes. Therefore the cash payments made by the assessee were out of business compulsion and commercial consideration and are covered by the exception provided in Rule 6DD. The facts of the instant case are materially similar as decided by the co-ordinate bench above. Therefore, respectfully following the case of M/s A Daga Royal Artis Vs. ITO (supra), we set aside the order of the Id. CIT (A) and direct the Id. AO to delete the addition.

**ITA No. 1216/Kol/2023 for A.Y. 2017-18**

08. The issue raised in ground of appeal is against the confirmation of addition of ₹13,50,000/- and ₹23,65,276/- by the Id. CIT (A) as made by the Id. AO by disallowing u/s 40(a)(ia) of the Act & cash deposited respectively.

09. The facts in brief are that the assessee filed the return of income on 30.10.2017, declaring nil income. During the financial year, the assessee had deposited cash totaling to ₹66,53,000/- in his bank account with Federal Bank Ltd. during the period between 09.11.2016 to 31.12.2016. Accordingly, the case of the assessee was selected for scrutiny under Computer Assisted Scrutiny Selection (CASS). The statutory notice u/s 143(2) of the Act was issued on 24.09.2018 and served upon the assessee but there was no compliance on the part of the assessee. Thereafter, the Id. AO issued summon u/s 131 of the Act on 02.08.2019 to the directors of the assessee company to substantiate the cash deposits during demonetization period. The Director Shri Chandrajeet Singh was appeared and his statement was recorded u/s 131 of the Act on 02.08.2019, wherein stated that ₹ 4,99,595/- and ₹5,13,960/- were returned by Shri Binder Singh & Shri Karick Sahoo in installments to whom advances were given for land purchases. These payments were received against advances already given to different parties. From the cash book it was found that between 05.04.2016 and 08.04.2016 cash payments were made of ₹7,00,000/- and ₹6,50,000/- to Shri Prosenjit Dasgupta & Shri Kartick Sahoo respectively. Thereafter, the show cause notice was given to the assessee as to why the cash deposits of ₹23,65,276/- should not be disallowed as the director has failed to substantiate the same.



Finally, the Id. AO added ₹13,50,000/- u/s 40(a)(ia) of the Act and ₹23,65,276/- on account of cash deposits during demonetization period in the assessment framed u/s 143(3) of the Act.

010. The Id. CIT (A) simply confirmed the addition of ₹23,65,276/- made by the Id. AO u/s 69A of the Act on account of cash deposit, whereas disallowance of ₹13,50,000/- u/s 40(a)(ia) of the Act was confirmed on the ground that there was no infirmity in the action of the Id. AO of disallowing payment in excess of ₹20,000/- in cash.

011. So far as the payments of ₹13,50,000/- are concerned, we note that the same was made against the purchase of lands which were given to various sellers against the proposed purchase of plots/land. Since the issue in this appeal is similar to one as decided by us in ITA No. 1217/KOL/2023 for A.Y. 2015-16, accordingly, our decision would apply mutatis mutandis to this appeal of assessee. Consequently, the order of Id. CIT (A) is set aside on this issue and the Id. AO is directed to delete the addition.

012. So far as the second addition of ₹23,65,276 is concerned qua the cash deposits during the demonetization period, we find that the money was received from different persons to whom the payments were made on account of advances for land purchase/plots. We have examined the cash book of the assessee and find that assessee has duly shown these receipts against the advances already given against purchase of land/plots. Therefore, we are not in agreement with the conclusion drawn by the Id. CIT (A) on this issue and accordingly, we set aside the order of the Id. CIT (A) on this issue by directing the Id. AO to delete the addition. The appeal of the assessee is allowed.



013. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 24.02.2025.

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 24.02.2025

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata