

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT AMEMBER
AND
SHRI PARESH M. JOSHI, JUDICIAL MEMBER**

**ITA No.636/Ind/2024
Assessment Year: 2015-16**

Radhika Devcon Private Limited, M-7, Akashdeep Complex, 21, Sneha Nagar, Sapna Sangeeta Road, Indore – 452 001. (Madhya Pradesh). [PAN – AAECR 9874 L]		Vs.	Income Tax Officer – 4(1), Indore, Madhya Pradesh – 452 001.
(Appellant)			(Respondent)
Assessee by	CA Shri S.N. Agrawal & CA Shri Pankaj Mongra		
Revenue by	Shri Ram Kumar Yadav, CIT(DR)		
Date of Hearing	17.04.2025		
Date of Pronouncement	09. 06.2025		

ORDER

PER ANNAPURNA GUPTA, AM:

This is an appeal filed by the Assessee against the order of the CIT(A), National Faceless Appeal Centre (NFAC), Delhi dated 02.07.2024, for the Assessment Year (A.Y.) 2015-16.

The grounds raised by the assessee are as under :-

- “1. That on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming the addition of Rs.37,15,000/- made by the Assessing Officer to the total income of the appellant on account of cash payment made*

towards purchase of plot by invoking the provisions of Section 40A(3) of the Act without properly appreciating the facts of the case and submissions made before him/her.

2. *The applicant reserves the right to add, alter and modify the grounds of appeal as taken by it.”*

2. The solitary issue in the present appeal pertains to disallowance of expenses made under Section 40A(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), on account of the payment made for the same in cash in excess of the limit specified in the said Section. The expense so disallowed relates purchase of land, the assessee being a Private Limited Company engaged in the business of construction of buildings for residential purpose. And amount so disallowed is Rs.38,42,750/-.

2.1 Orders of the authorities below reveal that initially the assessment for the impugned year was completed under Section 143(3) of the Act making an addition of Rs.1,00,45,545/- to the returned income of the assessee of Rs.17,51,450/-, thus assessing the total income at Rs.1,17,96,995/-. Subsequently, the PCIT-2, Indore passed order under Section 263 of the Act setting aside the assessment order passed under Section 143(3) of the Act, with a direction to re-examine the issue of violation of the provisions of Section 40A(3) of the Act since the assessee was found to have made cash payment of Rs.38,42,750/- for purchase of land/plot. The Assessing Officer, during the course of assessment proceedings in the set aside proceedings, required the assessee to show cause as to why disallowance under Section 40A(3) of the Act be not made of Rs.38,42,750/- in terms of Section 40A(3) of the Act. The assessee contended that the transaction was genuine

transaction duly recorded in the Sale Deed also and considering the primary object of enacting Section 40A(3) of the Act, being to keep a check on transactions undertaken to evade the liability to tax, there was no case for making any disallowance under Section 40A(3) of the Act. The assessee contended that the genuineness of the transaction and the transaction being free from vice of any device of evasion of tax, was relevant consideration which had to be looked into before making any disallowance under this Section. The Assessing Officer, however, was not convinced with the contention of the assessee and proceeded to disallow the entire amount of expenditure incurred in cash for purchase of land in violation of provisions of Section 40A(3) of the Act amounting to Rs.37,15,000/-.

3. The matter was carried in appeal before the Ld. CIT(A) where the assessee reiterated the contentions made before the Assessing Officer. The Ld. CIT(A) found no infirmity in the order of the Assessing Officer and confirmed the disallowance made by the Assessing Officer. His findings in this regard are contained in paragraph nos. 4.1 to 4.5 of his order which are as under :-

4.1. In the assessee's case, the submitted return for AY 2015-16 was assessed u/s.143(3) on 22.12.2017. Thereafter, the PCIT passed an order of Revision u/s.263, where the PCIT set aside the order u/s.143(3) and directed the AO to enquire and decide on the alleged cash payment of Rs.38,42,750/- made by the assessee, while purchasing certain pieces of land. The AO passed the revised order, following such direction on 30.03.2022, where after making enquiry, the said amount of Rs.38,42,750/- was added to the total income, already assessed u/s.143(3), by invoking the provision of Sec. 40A(3) of the Act. Aggrieved with the order, the assessee instituted the present appeal

- 4.2. *In the appeal, the assessee claimed that the facts of the case, as narrated in the assessment order, with regard to cash payment, of a part of the total consideration paid for acquisition of two plots of agricultural land, is not denied. However, it was done for business exigency and it is well-recorded in the copy of the Registered Sale Deeds, that the genuineness, Identity etc, are not in question. It submitted a plethora of decisions of various Courts and Income Tax Appellate Tribunals, in support of its claim that in the case of business expediency, the invocation of the stringent provision of Sec.40A(3), is to be construed liberally and therefore, asked for relief against such addition.*
- 4.3. *I have perused the submissions of the assessee. I have also perused that the AO has cited the Rule of the Hon'ble Apex Court, in the case of Attar Singh Gurmukh Singh Vs. ITO, reported in 191 ITR 667, where the Hon'ble Supreme Court clearly stated that the provisions of Sec. 40A(3) is attracted in all the cases of business transactions and there are specific relief allowed, in circumstances as given in Rule 6DD of the Income Tax Rules. The assessee could not submit, why its case is excludable under any provision of Rule 6DD.*
- 4.4. *Under the circumstances, I do not find any merit in the submissions made by the assessee to give any relief in this regard. Therefore, the addition of Rs.37,15,000/- as disallowed by the AO, u/s.40A(3), is upheld. I find that the AO has not invoked the said provision for the payment of cash of Rs.1,27,750/-, in respect of the payment made for acquisition of agricultural land and he restricted his disallowance only in respect of the land purchased within the vicinity of Indore city, as purchased by the assessee.*
- 4.5. *Therefore, the addition of Rs.37,15,000/- is sustained.”*

4. Before us, the Ld. Counsel for the assessee made two-fold contention against the disallowance;

- one was reiteration of the argument made before the lower authorities that transaction was genuine transaction, therefore, would not attract any disallowance under Section 40A(3) of the Act. In this regard, he placed reliance on the decision of the Jurisdictional High Court in the case of CIT vs. Achal Alloys (P) Ltd., [1996] 218 ITR 46 and also on the decision of ITAT Indore Bench in the case of M/s. Essargee Construction Pvt. Ltd. vs ITO-1(5), Bhopal [ITA No.10/Ind/2023] vide order dated 03.08.2023.
- The other limb of the argument against the disallowance made was that the impugned land form part of its closing stock and, therefore, in effect there was no expenditure incurred by the assessee so as to attract any disallowance under Section 40A(3) of the Act. In support, he placed reliance on the decision of the ITAT Indore Bench in the case of M/s. Tirupati Construction vs. DCIT-2(1), Ujjain [ITA Nos.658 & 659/Ind/ 2017].

5. The Ld. DR, on the other hand, relied on the orders of the authorities below emphasising the fact that mere genuineness of the transactions would not save the assessee from rigors of Section 40A(3) of the Act as long as the assessee does not demonstrate any business exigency for incurring expenditure in cash, as provided by law in the proviso to the said section read along with the circumstances listed in Rule 6DD of the Income Tax Rules, 1962. As for the Ld. Counsel for the assessee's argument that since the impugned land was part of its closing stock and no expenditure therefore by the assessee, the contention of the Ld. DR was that this argument was devoid of any merit since the undisputed fact was that the assessee had incurred expenditure on account of purchase of the impugned land in the course of carrying out its business of real estate development, which

was booked as Purchases in its Profit & Loss Account. That this was sufficient to qualify as expenditure and attract the provisions of Section 40A(3) of the Act, the Ld. DR contended.

6. We have heard the rival contentions .We do not find any merit in the contention of the Ld. Counsel for the assessee before us.

6.1 The provisions of Section 40A(3) of the Act, there is no dispute, provide for disallowance of expenses which are incurred in cash beyond the prescribed limit. The proviso to the Section saves certain expenses from the rigors of Section 40A(3) of the Act subject to the fulfilment of conditions specified in Rule 6DD of the Income Tax Rules, 1962 in this regard. The assessee, admittedly and undisputedly has incurred the impugned expenditure in excess of the limit specified and has not been able to demonstrate the existence of any of the conditions mentioned in Rule 6DD of the Rules, nor has been able to demonstrate any other business exigency warranting payment in cash in violation of the limit specified u/s 40 A(3) of the Act. There is no dispute with the aforesaid.

6.2 In the background of the above facts there can be no case for allowance of the impugned expenses since they clearly attract the provisions of section 40(A)(3) of the Act and are not saved by the proviso to the section read along with Rule 6DD of the Income Tax Rules, 1962.

6.3 The contention of the Ld. Counsel for the assessee before us is that the Section has to be given a purposive interpretation and the purpose of introducing Section 40A(3) of the Act being to curb evasion of tax and the transactions undoubtedly being genuine, the provisions of Section 40A(3) are not attracted. He has referred to the decision of

Hon'ble Jurisdictional High Court in the case of Achal Alloy (P) Ltd. (supra). We are not in agreement with same. The first and primary rule of interpretation is that words in a statute should be given their ordinary grammatical or natural meaning unless there is an intention to the contrary. The plain language of a statute must override any supposed intendment of the legislature and cannot be amended or stretched by court. The Hon'ble apex court in the case of Padmasundara Rao (DECD) And Others vs State of Tamil Nadu and Others 255 ITR 147 (SC) laid down that the first and primary rule of construction is that the intention of the legislature must be found in the words used by legislature itself. That courts cannot read anything into a statutory provision which is plain and unambiguous. Statute is the edict of legislature. The language employed in a statute is the determinative factor of legislative intent.

6.4 Even otherwise the intent of the section cannot be to exclude genuine transactions since Section 40(A)(3) of the Act operates on the premise that the transaction otherwise is genuine. And this is for the reason that if the expense were not genuine it would attract disallowance under Section 37 of the Act or any other provision of law. Section 40A(3) is triggered only when an otherwise genuine transaction /expense is incurred in cash beyond limit specified in the section.

6.5 Besides, we have noted that the Ld. CIT(A) in his order has referred to the judgement of the Hon'ble Apex Court in the case of Attar Singh Gurmukh Singh vs. ITO [1991] 191 ITR 667 pointing out that the Hon'ble Apex Court has clearly stated that the provisions of Section 40A(3) of the Act are attracted in all cases of business transactions and relief is allowed only in specified transactions under Rule 6DD of the

Income Tax Rules, which decision has not been distinguished by the Ld. Counsel for the assessee before us.

6.6 Even the reliance placed by the Ld. Counsel for the assessee on the decision of the Hon'ble Jurisdictional High Court in the case of Achal Alloy (P) Ltd. (supra), we find is completely misplaced. The Hon'ble Court in the said case noted not only genuineness of the transaction but also **existence of business exigency** for making the payment in cash when it found that the insistence on making the cash payment was founded on the fulcrum that the payees did not have any bank account and that, being illiterates required payment in cash. Therefore, the said decision is of no assistance to the assessee.

6.7 Therefore, the argument of the Ld. Counsel for the assessee that the transactions being genuine would not attract Section 40A(3) of the Act is, we hold, without any substance and is dismissed.

6.8 As for the other contention of the Ld. Counsel for the assessee that, the provisions of Section 40A(3) of the Act are not attracted in the present case since the assessee has not incurred any expenditure, we find the same also to be devoid of any merit. The argument of the Ld. Counsel of no expenditure having been incurred rests on the fact that the land purchased in cash remained in the closing stock of the assessee and therefore in effect no expenditure in relation to the same could be said to be incurred by the assessee. There is, we hold, absolutely no merit in the argument of the Ld. Counsel for the assessee. The fact remains that the assessee purchased the impugned lands during the year and debited the purchases to its Profit and Loss account. This is sufficient for the said transaction to qualify as expenditure. The fact that it was treated as closing stock does not take away the fact that

expenditure by way of purchases was incurred in relation to the said transaction of land. This is general and logical understanding in accounting parlance. This argument of the Ld. Counsel for the assessee is also dismissed.

6.9 In effect, we hold, there is no infirmity in the order of the Ld. CIT(A) upholding the disallowance of expenses under Section 40A(3) of the Act amounting to Rs.37,15,000/-.

The ground raised by the assessee is dismissed.

7. In the result, appeal of the assessee is dismissed.

Order pronounced in the open Court on this 9th June, 2025.

Sd/-
(PARESH M. JOSHI)
Judicial Member

Sd/-
(ANNAPURNA GUPTA)
Accountant Member

Indore, the 9th June, 2025

*PBN/**

*Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File*

By order

TRUE COPY

*Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore*

1.	Date of taking dictation	02.06.2025
2.	Date on which the typed draft is placed before the Dictating Member	03.06.2025
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	
4.	Date on which the approved draft is placed before other Member	
5.	Date on which the fair order is placed before the Dictating Member for pronouncement	
6.	Date on which the file goes to the Bench Clerk	
7.	Date on which the file goes to the Head Clerk	
8.	Date on which the file goes to the Assistant Registrar for signature on the order	
9.	Date of despatch of the Order	