

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.13/SRT/2025

Assessment Year: (2018-19)

(Hybrid hearing)

Rajan Budhisagar Singh 506, Priti Complex, Shital Park Society, Opp. Jalkamal Society, Navsari – 396445, Gujarat	बनाम/ Vs.	The Income tax Officer, Ward – 4, Navsari
स्थायी लेखासं./जीआइआरसं./PAN/GIR No: AHKPS9432M		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारितीकीओरसे/ Appellant by	Shri Sujesh C. Suratwala, CA
राजस्वकीओरसे / Respondent by	Shri Ajay Uke (Sr. DR)with Shri Kevin Langaliya, C.A.
सुनवाई की तारीख/ Date of Hearing	06/08/2025
उद्घोषणा की तारीख/ Date of Pronouncement	03/11/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 26.12.2024 by the Commissioner of Income-tax (Appeals)[in short, "the CIT(A)"] for the assessment year (AY) 2018-19, which in turn arises out of assessment order passed by the Assessing Officer (in short, 'AO') u/s. 143(3)of the Act on 25.02.2021.

2. Grounds of appeal raised by the assessee for the appeal are as under:

“(1) The Ld. AO has made an addition on the basis of SCN cum Draft Assessment order dated 28.01.2021 which was bad in law, void ab initio because the said SCN

cum draft Assessment order was issued without considering the reply submitted by the assessee against the notice issued u/s.142(1) dated 04.1.2021.

(2) On the facts and circumstances of the case and in law the Ld. AO as well as CIT(A)/NFAC grossly failed to appreciate the business carried out by the assessee during the year under consideration for plying and hiring vehicles. The disallowance of Rs.9,58,235/- by invoking the provisions of Section 40A(3) is unjustified, bad in law and required to be quashed.

(3) On the facts and circumstances of the case and in law the Ld. AO as well as CIT(A)/NFAC has not considered interpretation of Section 40A(3A) correctly which is primarily applied for Plying and Hiring business for which assessee is eligible to have benefit of paying expense in cash up to Rs.35,000/- since 01.10.2009.

(4) On the facts and circumstances of the case and in law the Ld. CIT(A)/NFAC vide para no. 4.2 of Order passed u/s.250 of the Act dated 26.12.2024 state as hereunder;

'Disallowance u/s.40A(3) for making cash payment is available only for paying for the Hiring or Plying vehicles and not for all types of payments.'

Whereas, the provision of Section 40A(3) and 40A(3A) state as follows :

Section 40A(3) in the Income tax Act, 1961 :

'Where the assessee incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a single day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft (or use of electronic clearing system through a bank account or such a other electronic mode as may be prescribed) exceeds ten thousand rupees. No deduction shall be allowed in respect of such expenditure.'

Considering the plain reading of the provisions, disallowance made for Rs.9,58,235/- u/s.40A(3) is bad in law, pervert and required to be deleted.

(5) On the facts and circumstances of the case and in law the Ld. CIT(A)/NFAC vide para no. 4.2 of order passed u/s.250 of the Act dated 26.12.2024 state as hereunder;

Assessee nowhere has given the details of payments made to such parties day wise or throwing light on the terms and conditions of such a payments, nor has taken any such argument on such lines either before the AO or before me.

As a matter of fact, during the course of scrutiny proceedings before Ld. AO in response to notice issued u/s.142(1) of the Act vide notice DIN No.

ITBA/AST/F/142(1)/2020-21/1028417329(1) dated 28.10.2020 ledger of repair exp. Ledger (Tejpal motors) and Exp. Ledgers (Cleaners salaries, diesel salary) for day to day basis for 01.04.2017 to 31.03.201 and copy of RC book for the Truck and during the course of first appellate proceedings before CIT(A) and NFAC in response to notice issued u/s.250 vide notice DIN No. ITBA/NFAC/F/APL_1/2024-25/1067884424(1) dated 05.09.2024, assessee submitted the following :

Copy of Repair Exp. Ledger (Tejpal motors) and Exp. Ledgers (Cleaners salaries, Diesel salary) for day to day basis for 01.04.2017 to 31.03.2018.

However, Ld. CIT(A)/NFAC without considering the above facts disallowed the expenditure to the extent the Rs.9,58,235/- by invoking the provision of Section 40A(3) is wrong, bad in law, pervert and required to be quashed.

(6) Your appellant further reserves its right to add, alter or to amend any of the aforesaid grounds before or at the time of hearing of an appeal. In view of all these and other grounds which may be produced during the hearing of appeal, the appeal may be allowed and justice rendered.”

3. Brief facts of the case are that the assessee is an individual deriving his income from “Carting rent income and commission income from Sahara India and Sahara India Life Insurance Co. Ltd.” The case of the assessee was selected for complete scrutiny to verify the ‘Business expense’. During the assessment proceedings, assessee was asked to furnish details of commission received, depreciation details, interest paid, repairing expenses and other relevant material by the issuance of notices u/s 142(1) of the Act. In response, the assessee furnished the information on various dates. On verification of the individual ledger extracts, following payments were made in cash exceeding Rs.10,000/-: (i) Tejpal Motors(P) Ltd. of Rs.22,958/-, (ii) Cleaners’ salary paid to Sri Irfan Khan of Rs.84,000/-, (iii) Cleaners salary paid to Sri Javed Khan of Rs.84,000/-, (iv) Diesel

expenses paid of Rs.7,67,277/-. In view of the above, the total disallowance proposed u/s 40A(3) of the Act aggregated to Rs.9,35,277/-.

3.1 Accordingly, a show cause notice was issued to the assessee on 01.02.2021. In its compliance, assessee furnished his reply on 04.01.2021; however, the AO did not find the same to be tenable. AO observed that the limit of Rs.35,000/- is allowable only for the payments made towards for plying, hiring or leasing goods carriages u/s 40A(3A) of the Act and not for the assessee engaged in plying, hiring business. Therefore, aforesaid expenses aggregating to Rs.9,35,277/- were disallowed u/s 40A(3) and 40A(3A) of the Act and added to the total income of the assessee. Accordingly, order u/s 143(3) of the Act was passed on 25.02.2021, determining total income was at Rs.17,37,347/-.

4. Aggrieved by the aforesaid assessment order dated 25.02.2021, assessee preferred appeal before CIT(A). The CIT(A) observed that the exemption u/s 40A(3A) of the Act is valid only till the cap of Rs.35,000/- and the same is valid only for plying for the hiring or plying vehicles. He further held that such exemption cannot be claimed by any person in respect of payment of salary in cash, i.e., any person engaged in the business of plying and hiring vehicles cannot claim such exemption u/s 40A(3A) for payment of salary in cash. The CIT(A) further observed that the purpose of sections 40A(3) and 40A(3A) is just to curb the menace of cash economy without posing too many hurdles, given the nature of business requiring immediate cash. To stretch it to the extent of applying the provisions for payment

of salary too, would be against the spirit of the section. The CIT(A) also observed that the assessee nowhere had given the details of payments made to such parties day-wise or throwing light on the terms and conditions of such payments nor has taken any such argument either before AO or before CIT(A). The CIT(A), therefore, dismissed the appeal of the assessee and passed the order u/s 250 of the Act on 26.12.2024.

5. Aggrieved by the order of CIT(A), assessee filed present appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the assessee submitted that the assessee was engaged in the business of plying and hiring of vehicles and earned commission income from Sahara India and Sahara India Life Insurance Co. Ltd. The assessee owns 4 heavy vehicles which were exclusively used in carting business. The Ld. AR further stated that during the year, the assessee had earned carting income for Rs.76,66,550/- and the disallowance of expenditure made in cash for Rs.9,35,277/- pertained to carting income only. It is also submitted that all the expenditure were made on single days and less than Rs.35,000/-. In view of the same, the Id. AR, requested to delete the addition made by the AO and confirmed by the CIT(A).

6. The learned Senior Departmental Representative (Id. Sr. DR) for the revenue supported the orders of the lower authorities, contending that the benefit of Section 40A(3A) cannot be stretched to cover all cash payments merely because the assessee is engaged in plying and hiring of vehicles. He submitted that the

statutory relaxation is confined to payments made for hiring or leasing goods carriages and not to expenses like salary or purchase of diesel.

7. We have heard both sides and perused the materials available on record. In the present case, the assessee admittedly owns and operates trucks and earns carting income. The nature of expenses disallowed are (i) diesel, (ii) cleaner's salary, and (iii) minor repair expenditure. These payments are directly connected to the running of trucks and are incurred on a day-to-day basis in places where banking facilities may not always be available. The legislative intent behind the relaxation u/s 40A(3A) is to accommodate such practical business exigencies. Therefore, a liberal interpretation consistent with the purpose of the provision is warranted, particularly for transporters. We are of the considered view that diesel payments are an inherent and indispensable part of goods carriage operations, often required to be made in cash at fuel depots or on highways. Considering the business volume and the nature of evidence produced, it would be reasonable and in the interest of justice to delete disallowance to the extent of Rs.2,00,000/- pertaining to diesel and related on-road expenses. However, payments relating to cleaner's salary and repair expenses cannot be regarded as falling strictly within the purview of the exception meant for hiring or plying of goods carriages. Accordingly, the remaining disallowance of Rs.7,35,277/- is confirmed. The AO is accordingly directed to delete Rs.2,00,000/- out of the total disallowance of Rs.9,35,277/-. The grounds are partly allowed.

8. In the result, the appeal of the assessee is partly allowed.

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963 on
03/11/2025 in the open court.

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 03/11/2025

SAMANTA

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat