

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' (SMC) BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।
[BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No.1996/Mds/2016
निर्धारण वर्ष /Assessment year : 2011-2012.

Shri. Srinivasan Balaji,
11/53, PVP Koil Street,
Agaramel,
Nazarathper,
Chennai 600 123.

Vs. The Assistant Commissioner of
Income Tax,
Circle -I,
Vellore.

[PAN AEBPB 5187N]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. Jharna B. Harilal, C.A
प्रत्यर्थी की ओर से /Respondent by : Shri. Clement Ramesh Kumar, IRS,
JCIT.

सुनवाई की तारीख/Date of Hearing : 01-03-2017
घोषणा की तारीख /Date of Pronouncement : 29-03-2017

आदेश / ORDER

In this appeal filed by the assessee, it is aggrieved on disallowance made by the Id. Assessing Officer u/s.40A(3) of the Income Tax Act, 1961 (in short "the Act") to the extent sustained by the Id. Commissioner of Income Tax (Appeals).

2. Ld. Counsel for the assessee submitted that out of the total disallowance of ₹20,81,018/- u/s.40A(3) of the Act, Id. Commissioner of Income Tax (Appeals) had sustained an addition of ₹18,21,018/-, As per Id. Authorised Representative out of the above amount ₹13,00,000/- was not charged to the profit and loss account since it represented payment to one Shree Venkateswara Engineering Works which was a proprietorship of assessee's wife. As per Id. Authorised Representative, the amount was only a loan given and never charged to profit and loss account. Similarly according to Id. Authorised Representative ₹40,000/- was paid to M/s. Shakthi Engineering for acquiring plant and machinery and not charged to profit and loss account. Again, as per Id. Authorised Representative a sum of ₹1,75,000/- was paid by the assessee for construction of shed which also was not charged to profit and loss account. Further as per Id. Authorised Representative a sum of ₹1,68,225/- was paid to small time contractors at various work sites and due to commercial expediency such payments had to be made in cash. According to the Id. Authorised Representative assessee was a small time fabricator and doing construction of small building and had no undisclosed income. Similarly as per Id. Authorised Representative there were purchase of material worth ₹1,37,793/- which also required payments in cash. Ld. Authorised Representative submitted that once the payments were

genuine and made for commercial expediency, rigours of Sec. 40A(3) of the Act would not apply. Contention of the Id. Authorised Representative was that Rule 6DD was not exhaustive of the circumstances under which application of Sec. 40A(3) of the Act could be excused. Reliance was placed on the decision of Kolkata Bench of the Tribunal in the case of *Sri Manoranjan Raha vs. ITO (in ITA No.1448/Kol/2011, dated 18.11.2015)* and that of Hon'ble Punjab and Haryana High Court in the case of *Gurdas Garg vs. CIT (in ITA No.413 of 2014, dated 16.07.2015)*.

3. Per contra, Id. Departmental Representative strongly supporting the orders of the authorities below submitted that assessee had never argued before any of the lower authorities that ₹13,00,000/- paid to Shree Venkateshwara Engineering Works, ₹1,75,000/- paid for construction of shed and ₹40,000/- paid for acquiring machinery works were not claimed by it as expenditure in profit and loss account. In so far as other payments are concerned, Id. Departmental Representative submitted that assessee could not show business expediency of making such payments in cash. According to him, the payments were admittedly made in cash in excess of the amounts stipulated u/s. 40A(3) of the Act and hence the disallowances were rightly done.

4. I have considered the rival contentions and perused the orders of the authorities below. Claim of the assessee before me is that a sum of ₹13,00,000/- paid on the following dates to Shree Venkaeshwara Engineering Works were actually a loans/drawings of the assessee and not charged to profit and loss account.

<i>Date</i>	<i>Particulars</i>	<i>Amount (₹)</i>
<i>30.09.2010</i>	<i>Shree Venkaeshwara</i>	<i>5,00,000/-</i>
<i>28.02.2011</i>	<i>Shree Venkaeshwara</i>	<i>3,00,000/-</i>
<i>02.03.2011</i>	<i>Shree Venkaeshwara</i>	<i>5,00,000/-</i>
	<i>Sub Total</i>	<i>13,00,000/-</i>

Similarly as per the assessee, the following payments were capitalized since these represented acquisition of assets.

<i>12.04.2010</i>	<i>Ganesan</i>	<i>75,000/-</i>
<i>12.05.2010</i>	<i>Ganesan</i>	<i>1,00,000/-</i>
	<i>Sub Total</i>	<i>1,75,000/-</i>
<i>12.04.2010</i>	<i>Shakthi Engineering</i>	<i>40,000/-</i>

It may be true that such claims were not made before lower authorities. Nevertheless, the disallowance u/s. 40A(3) of the Act can be made only where deductions are claimed by the assessee against its business income. When there is no deduction from the profit by way of charges by debits in profit and loss account there can be no disallowance u/s.40A(3) of the Act. However, whether any of the

above amounts were actually charged to the profit and loss account or not, have not been verified by the lower authorities. Therefore, claim of the assessee that ₹13,00,000/- paid to Shree Venkateshwara Engineering Works, ₹1,75,000/- paid to Ganesan and ₹40,000/- paid to Shakthi Engineering, were never charged in the profit and loss accounts and hence not liable for disallowance u/s.40A(3) of the Act is remitted back to the Id. Assessing Officer for consideration afresh in accordance with law.

5. The balance amounts it seems were paid to the following purposes.

<i>12.04.2010</i>	<i>Mohan Contract</i>	<i>70,000/-</i>
<i>12.05.2010</i>	<i>Mohan Contract</i>	<i>37,000/-</i>
<i>12.04.2010</i>	<i>Sekar Contract</i>	<i>40,000/-</i>
<i>30.11.2010</i>	<i>Palani -Painter</i>	<i>21,225/-</i>
	<i>Sub Total</i>	<i>1,68,225/-</i>

<i>12.05.2010</i>	<i>Lakshmi paints</i>	<i>37,793/-</i>
<i>31.12.2010</i>	<i>CSK Agency Private Ltd</i>	<i>1,00,000/-</i>
	<i>Sub Total</i>	<i>1,37,793/-</i>

Claim of the assessee is that the above payments were made under circumstances which compelled it to give the money in cash on account of business expediency. Alleviating circumstances whereby application of Sec. 40A(3) of the Act is excluded is laid down in Rule

6DD. Kolkata Bench of the Tribunal following the judgment of Hon'ble Punjab and Haryana High Court in the case of *Gurdas Garg (supra)* had held that if genuineness of the payments is not disbelieved a disallowance u/s.40A(3) of the Act could not be made. Their Lordship took a view that alleviating circumstances mentioned in Rule 6DD need not be considered as exhaustive. There is considerable strength in the argument of the Id. Authorised Representative that payments could only be effected in cash at various work sites of the assessee, due to business exigency. I am therefore of the opinion that the sum of ₹1,68,225/- paid on account of commercial expediency could not be disallowed u/s.40A(3) of the Act. I delete such disallowance. However for the sum of ₹1,37,793/- paid for purchase of materials assessee was unable to show what where the compelling circumstances of business expediency which required it make the payment in cash. Hence Sec. 40A(3) of the Act was in our opinion correctly applied to this amount. I sustain the disallowance of ₹1,37,793/-.

6. To summarize the results, I remit back to the Id. Assessing Officer for verification of the payment claimed by the assessee as not charged to profit and loss account for consideration afresh in accordance with law and I delete the disallowance of ₹1,68,225/- paid

by the assessee to his employees at various work sites. I sustain the disallowance of ₹1,37,793/- paid for purchase of materials.

7. In the result, appeal of the assessee is treated as partly allowed for statistical purpose.

Order pronounced on Wednesday, the 29th day of March, 2017, at Chennai.

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 29th March, 2017

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |