

IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH; AMRITSAR.

BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER
AND SH. B.P.JAIN, ACCOUNTANT MEMBER

I.T.A. No.182(Asr)/2012
Assessment year:2007-08
PAN :AABHR0584B

Shri Raman Mahajan,HUF
Amritsar.
(Appellant)

vs. Income Tax Officer,
Ward 4(3), Amritsar.
(Respondent)

Appellant by:Sh. Padam Bahl, CA
Respondent by:Sh.R.L.Chhanalia, DR

Date of hearing: 15/01/2013
Date of pronouncement:22/01/2013

ORDER

PER BENCH ;

This appeal of the assessee arises from the order of the CIT(A), Amritsar, dated 12.03.2009 relating to assessment year 2007-08. The assessee has raised following grounds of appeal:

- “1. That the Id. CIT(A), Amritsar has grossly erred in confirming the addition of Rs.2,33,332/- made by Income Tax Officer, Ward 4(3), Amritsar on account of disallowance for expenditure of Rs.11,66,662/- @ 20% on the alleged payments made in violation of provisions of Sec. 40(A)(3) of the Income Tax Act.

2. That the Id. CIT(A), Amritsar has failed to appreciate that the ITO Ward 4(3), had failed to discharge the onus to prove that cash payments of Rs.11,66,662/- were made by the assessee at one time and not as claimed by the assessee.
 3. That the Id. CIT(A), Amritsar has failed to appreciate the real import of the provisions of section 40A(3) of the Act and has ignored the fact that the payment were made bonafide and stood duly confirmed by the receiver in the purchase deed.”
2. The Ld. counsel for the assessee, Mr. Padam Bahl,CA has also raised additional ground of appeal, which reads as under:
- “1. That the Id. CIT(A), Amritsar and the Id. A.O. have both failed to appreciate that the assessee had acquired & disposed the lands under Power of Attorney & had not executed any purchase deed entailing the provisions of Sec. 40A(3) of the Income Tax Act, 1961.”
 3. The additional ground is admitted since the matter goes deep into the root of the matter and is a legal ground in view of the decision of the Hon’ble Supreme Court in the case of National Thermal Power Co. Ltd. vs. CIT reported in 229 ITR 383 (SC).
 4. The brief facts in the grounds of the assessee and the additional ground of the assessee are that the assessee derives business income from dealings in real estate i.e. from sale and purchase of land and selling of land/plots after development. The AO found that the assessee has incurred expenditure by making cash payment exceeding Rs.20,000/- other than by

an account payee bank cheque or account payee bank demand draft to the following persons:

Sl	Name of the party(S/Shri)	Date	Amt (in (Rs)
1	Sawinder Singh S/o Dharan Singh, Village Verka, Tehsil Verka, Amritsar.	28.07.2007	7,00,000/-
2.	Kuldip Singh S/o Sh.Jaswant Rai, Butter Kala, Tehsil Baba Bakala, Amritsar.	30.3.2007	4,66,662/-
	Total		11,66,662/-

The assessee was given show cause notice for which the assessee filed its written reply dated 18.12.2009. The AO sought direction under section 144A from his Range Head, who had directed that it is a fit case where the assessee has violated provisions of section 40A(3) by making cash purchases exceeding Rs.20,000/- other than by way of crossed cheque/demand draft in respect of the above cited instances when there was neither any business exigency nor any cause or reason provided under Rule 6DD of the Income Tax Rules, 1962. The AO accordingly made disallowance of Rs.2,33,332/- @ 20% of such cash purchases amounting to Rs.11,66,662/-.

5. Before the Id. CIT(A), the assessee submitted that he has made cash payment of each amount of Rs.20,000/-, which for the sake of clarity is reproduced as under:

Date	Time	Amount in (Rs.)
24.11.06	10AM	20,000/-
24.11.06	12AM	20,000/-
24.11.06	3PM	20,000/-
Sub-total of a day		60,000/-
27.11.06	10AM	20,000/-
27.11.06	10.30AM	20,000/-
27.11.06	12.15PM	20,000/-
27.11.06	1.30PM	20,000/-
27.11.06	2.30PM	20,000/-
27.11.06	3.30PM	20,000/-
27.11.06	4.15PM	20,000/-
Sub-total of a day		1,40,000/-
28.11.06	10.15AM	20,000/-
28.11.06	10.50AM	20,000/-
28.11.06	12 PM	20,000/-
28.11.06	12.30PM	20,000/-
28.11.06	11.25AM	20,000/-

28.11.06	1.30PM	20,000/-
28.11.06	2.30PM	20,000/-
Sub-total of a day		1,40,000/-
29.11.06	10AM	20,000/-
29.11.06	11AM	20,000/-
29.11.06	12PM	20,000/-
29.11.06	2PM	20,000/-
29.11.06	4PM	20,000/-
Sub-total of a day		1,00,000/-
30.11.06	10.30AM	20,000/-
30.11.06	10AM	20,000/-
30.11.06	12PM	20,000/-
30.11.06	1 PM	20,000/-
30.11.06	2PM	20,000/-
30.11.06	3.30PM	20,000/-
Sub-total of a day		1,20,000/-
1.12.06	1.30PM	20,000/-
1.12.06	11.30AM	20,000/-
1.12.06	11 AM	20,000/-
1.12.06	2.50PM	20,000/-
1.12.06	2.30PM	20,000/-
1.12.06	4.20PM	20,000/-

1.12.06	3.50PM	20,000/-
Sub-total of a day		!,40,000/-
Grand Total		7,00,000/-

6. The Ld. CIT(A) observed that photocopies of above said 35 cash payments vouchers are self made, does not indicate the exact name of the recipient of cash payment and complete address identifying the authenticity of the recipient with regard to real estate transactions claimed for concerned plots bearing Khasra No.145/8, 8-0/9,8-0/12,8-0/13, 8-0/18,8-0/19,8-0. Nothing has been brought on record by the assessee before the Id. CIT(A) that such self made vouchers were produced before the A.O.. Also no business expediency has been proved before the Id. CIT(A) as to whether such payments are covered under Rule 6DD of the Income Tax Rules 1962. Moreover, banking facilities are duly available at Verka, Tehsil Baba Bakala, Amritsar District, has not been disputed by the assessee at any stage. Ld. CIT(A), therefore, rejected the contentions of the assessee and accordingly confirmed the action of the Assessing Officer.

7. Before us, the Id. counsel for the assessee, Mr. Padam Bahl, CA raised the additional ground that purchases made of the lands by the assessee are on

Power of Attorney system and the purchase deed had not been executed. Therefore, such purchases though made in cash and lands so purchased, sold in cash are not covered under the provisions of section 40A(3) of the Act and provisions of section 2(47) with regard to definition of transfer are not applicable while dealing with the said provisions of section 40A(3) of the Act.

7.1. It was argued by the Id. counsel for the assessee, Mr. Padam Bahl, CA that though the documents executed contain all the documents like agreement to sell, specific power of attorney, general power of attorney, receipts and having taken possession of land on one hand on payment of the purchase consideration to the seller, the assessee had enjoined the property is not in dispute. The land has been sold again on the same system of documents as above said power of attorney system. Mr. Padam Bahl, therefore, prayed to delete the disallowance confirmed by the Id. CIT(A).

7.2. The Ld. counsel for the assessee also argued with regard to the payments of vouchers produced before the Id. CIT(A) which have been shown to have been made at different times on the same date. No evidence or any record has been produced before the Id. CIT(A) or even before us. Still, the Id. counsel for the assessee, Mr. Padam Bahl claimed that the

payments of Rs.20,000/- at different hours were paid on the same date and does not come under the provisions of section 40A(3) of the Act. He relied upon the decision of the Hon'ble Orissa High Court in the case of CIT vs. Aloo Supply & Co. (1980) 121 ITR 680 and decision of Hon'ble Punjab & Haryana High Court in the case of CIT vs. Bal Krishan Jagdish Chand reported in (2007) 213 CTR 174.

8. The Ld. DR, on the other hand, relied upon the orders of both the authorities below.

9. We have heard the rival contentions and perused the facts of the case. First of all, we will deal with the additional ground raised by the assessee. It was argued by the ld. counsel for the assessee that purchases of the land payment for which was made in cash for which possession has been taken and the documents which are necessary like agreement to sell, power of attorney, general power of attorney and other documents are also signed by the seller in lieu of the total consideration paid to the seller. The said property is held as stock in trade is not under dispute. The said property is enjoined for some time by the assessee is also not under dispute. The said property is sold on the power of attorney system and again all the documents are signed by the seller i.e. the assessee and possession given to the buyer

completely in lieu of consideration received is also not under dispute. The only dispute raised by the Id. counsel for the assessee is that the said lands are not registered by the proper purchase deed and therefore, provisions of section 40A(3) of the Act are not attracted. The definition of section 2(47) is not applicable to section 40A(3) of the Act.

10. In this regard, we are of the view that there is no dispute to the fact that the assessee has incurred the expenditure on purchase of the land as stock-in-trade for which payments have been paid otherwise than account payee cheque or account payee bank draft. The assessee has also claimed that the said expenditure in the profit & loss account is also not under dispute. As regards the sale of the said property held as stock in trade has been sold and the assessee has received the consideration otherwise than by account payee cheque or account payee bank draft. The assessee after incurring expenditure on buying the property as stock in trade as per agreement to sell, power of attorney and other documents alongwith cash receipts as receipt of total consideration in lieu of the property sold by the seller is directly covered under the provisions of section 40A(3) of the Act since the assessee had made the payments otherwise than by account payee cheque or account payee bank draft which exceeds Rs.20,000/- Therefore, the arguments made by the learned counsel for the assessee are not found

convincing and are not according to the provisions contained in section 40A(3) of the Act, though the provisions of section 2(47) of the Act are not may or may not be applicable in the present case. Therefore, having declared purchases and the sales of the impugned property in the profit & loss account which is not under dispute and our findings hereinabove, the additional ground raised by the assessee is dismissed.

11. As regards the payments of Rs.20,000/- or more, the assessee has not substantiated his claim that the payments of Rs.20,000/- or more with regard to the purchases were made for Rs.20,000/- or less before the AO. It is also not on record whether such claim was actually made before the AO or not. With regard to the claim before the Id. CIT(A), all the vouchers are self made vouchers and without any authenticity of the name and complete address of the recipient. From the claim of the assessee before the Id. CIT(A), the payments are claimed to have been made on different hours on the same day and accordingly on different dates. Payments of Rs.20,000- claimed to have been made at different hours on the same day is nothing but a self-made story to come out of the provisions of section 40A(3) of the Act, which is without any evidence and cogent explanation. The Ld. CIT(A) has rightly not accepted such claim of the assessee, which on the face of it is a false claim and is without any evidence or any cogent explanation. Nothing

has been brought on record as the assessee is covered under Rule 6DD of the Income Tax Rules, 1962. Therefore, in the facts and circumstances of the case, the Id. CIT(A) has rightly rejected the claim of the assessee. We find no infirmity in his order. Accordingly, all the grounds of the assessee including the additional ground are dismissed.

12. In the result, the appeal of the assessee in ITA No.182(Asr)/2012 is dismissed.

Order pronounced in the open court on 22nd January, 2013.

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

Sd/-
(B.P. JAIN)
ACCOUNTANT MEMBER

Dated: 22nd January, 2013

/SKR/

Copy of the order forwarded to:

1. The Assessee:Sh. Raman Mahajan HUF, Amritsar.
2. The ITO Ward 4(3), Asr.
3. The CIT(A), Asr.
4. The CIT, Asr.
5. The SR DR, ITAT, Amritsar.

True copy
By order

(Assistant Registrar)
Income Tax Appellate Tribunal,
Amritsar Bench: Amritsar.

