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IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'C' NEW DELHI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.2896/Del/2018
Assessment Year: 2014-15

M/s. Geo Connect Ltd., Room No. 110, Indraprakash Building, 21, Barakhamba Road, New Delhi	**Vs.**	DCIT, Circle-10(1), New Delhi
PAN :AAECS2401C		
(Appellant)		**(Respondent)**

AND

ITA No.2958/Del/2018
Assessment Year: 2014-15

DCIT, Circle-10(1), New Delhi	**Vs.**	M/s. Geo Connect Ltd., Room No.110, Indraprakash Building, 21, Barakhamba Road, New Delhi
		PAN :AAECS2401C
(Appellant)		**(Respondent)**

Assessee by	Shri Rohit Jain, Advocate Ms. Manisha Sharma, Advocate
Department by	Ms. Anupama Singla, Sr. DR

Date of hearing	31.05.2022
Date of pronouncement	29.08.2022

ORDER

PER SAKTIJIT DEY, JM:

Captioned cross appeals arise out of order dated 12.02.2018 of learned Commissioner of Income Tax (Appeals)-4, New Delhi, pertaining to assessment years 2014-15.

ITA No. 2896/Del/2018 (Appeal by assessee)

2. The effective grounds raised by the assessee are as under:

> *1. That on the law, facts and in the circumstances of the case, the Learned Commissioner of Income-tax (A) has erred in confirming the disallowance of Rs.1,06,50,000/- made by Learned Assessing Officer invoking provisions of section 40A(3) of Income Tax Act 1961, without appreciating that the disallowance was not warranted on the facts of the case.*
>
> *1.1 That on the facts and in the circumstance of the case and in law the CIT(A) erred in sustaining the disallowance of Rs.1,06,50,000/- u/s. 40A(3) of the IT Act despite the fact that no deduction in respect of said sum was claimed in the computation of income from business. The disallowance u/s 40A(3) has been made by the learned AO and confirm by the CIT(A) in a narrow premise without consideration of business exigency and requirements of the appellant. Both the authorities failed to adjudicate the same in its proper prospective, hence this addition is also liable to be deleted.*
>
> *2. That the appellant assessee craves, leaves to add, alter, amend, substitute, withdraw or forego any of the ground(s) of appeal before or at the time of hearing.*
>
> *3. That the order of Learned CIT (A) is bad in law and wrong on facts of the case and is in violation of the principles of natural justice without providing reasonable opportunity to the appellant assessee to meet the merits of its case.*

3. As could be seen from the grounds raised, the dispute is with regard to disallowance of an amount of Rs.1,06,50,000/-. Briefly the facts are, the assessee is a resident corporate entity. For the assessment year under dispute, the assessee filed its return of income on 28.11.2014 declaring income of Rs.8,50,68,370/-. In course of assessment proceeding, the Assessing Officer, on verifying the Tax Audit Report, observed that the assessee had made payments otherwise than by way of account payee cheques/bank drafts in relation to the expenses incurred, which

are in violation of section 40A(3) of the Income-tax Act, 1961 (in short 'the Act') read with Rule 6DD of the Income Tax Rules, 1962 (in short 'the Rules'). Accordingly, he called upon the assessee to show-cause as to why the amount of Rs.1,06,50,000/- should not be disallowed. In response to the show-cause notice, the assessee furnished its reply stating that the payment was made to Senior Citizen towards purchase of agricultural land. Further, it was submitted, the person concerned refused to receive the amount in cheque or draft and insisted for payment in cash. It was submitted, the payment was made at the time of registration in the presence of sub-registrar. Therefore, assessee's case falls under the exception provided in clause (j) of Rule 6DD. The Assessing Officer, however, was not convinced with the submission of the assessee, hence, proceeded to disallow the amount of Rs.1,06,50,000/- under section 40A(3) of the Act. The assessee unsuccessfully contested the disallowance before learned Commissioner (Appeals).

4. Reiterating the stance taken before the departmental authorities, learned counsel for the assessee submitted that the seller of the agricultural land put a pre-condition for registration of sale deed by insisting that the entire consideration has to be paid in cash before registration. He submitted, since, the seller insisted

upon cash payment, the assessee had no other alternative but to make payment through bearer cheques which were handed over to the seller before registration. He submitted, once the seller withdrew the money from the bank, then only he agreed for registration of the sale deed in favour of the assessee. Drawing our attention to section 40A(3) of the Act, he submitted, the object of the provision is to ensure that no fictitious amount is claimed as expenditure by the bearer. He submitted, the intention of the legislature was not to restrict the genuine business activity, hence, the provision cannot be applied de-hors commercial consideration of the payment. He submitted, where the bearer is able to establish the identity of the recipient and the genuineness of payment/transaction, cash payment cannot be disallowed under section 40A(3) of the Act. He submitted, primary object of section 40A(3) is to curb evasion of tax and not to obstruct genuine transaction. Further, drawing our attention to clause (j) of rule 6DD, he submitted, prior to the amendment, the rule provided for payment in cash in case of exceptional and unavoidable circumstances. He submitted, in spite of amendment, the courts and Tribunals have repeatedly held that considering that there has been no change in substantive provision of section 40A(3), insofar

as, consideration of business expediency and other relevant factors are concerned, it could not be said that the consideration of business expediency and other relevant factors as provided in section 40A(3) have been diluted by way of amendment in Rule 6DD of the Rules. In support of such contention, he relied upon the following decisions:

1. *Anupam Tele Services (2014) 362 ITR 92 (Guj.)*
2. *A. Daga Royal Arts V. ITO ,[2018] 94 taxmann.com 401 (Jaipur – Tribn.)]*
3. *KGL Network (P.) Ltd. Vs. ACIT [2018] 68 ITR (T) 371 (Del. Trib.)*
4. *Dhuri Wine Vs. DCIT [2017] 83 taxmann.com 20 (Chd. – Trib.)*
5. *M/s. Ajmer Food Products Pvt. Ltd. Vs. JCIT, ITA No. 625/JP/14 (Ajmer Trib.)*

5. Without prejudice, he submitted, where a seller of agricultural land insisted upon payment in cash, no disallowance under section 40A(3) can be made. In support of such contention, he relied upon the following decisions:

1. *Smt. Sangeeta Verma Vs. CIT (284 Taxman 303) (Ald. HC)*
2. *A. Daga Royal Arts. Vs. ITO [2018] 94 taxmann.com 401 (Jaipur – Trib.)*
3. *Vijayeta Builcon (P.) Ltd. Vs. ACIT [2021 186 ITD 493 (Jaipur – Trib.)*

6. Finally, he submitted, no disallowance under section 40A(3) of the Act can be made where no expenditure was claimed as

deduction during the year. He submitted, in case of the assessee, the land purchased formed part of the closing inventory and the assessee has not claimed any deduction in respect of the same. That being the case, no disallowance under section 40A(3) can be made. In support, he relied upon a decision of the Tribunal in case of M/s. Tirupati Construction Ujjain Vs. DCIT, ITA No. 522/Ind./2014 (Indore – Trib.)

7. Learned Departmental Representative strongly relied upon the observations of the Assessing Officer and learned Commissioner.

8. We have considered rival submissions and perused the materials on record. The factual matrix reveal that the assessee is in real estate business and for that purpose it purchased an agricultural land from one Sh. Ugma, an old man of 75 years. Towards sale consideration of the said land, the assessee issued bearer cheques for an amount of Rs.1,06,50,000/- to the seller. It is the stand of the assessee from the stage of assessment proceeding itself that the seller of the agricultural land made a pre-condition of payment of cash for registration of sale deed. Since, the assessee was desperately in need of the land, he had no other option but to accede to the pre-condition of the seller. Accordingly,

the payment was made through bearer cheques. From perusal of bank statements, a copy of which is placed in the paper-book, it appears that the sale consideration was paid to the seller of the agricultural land through eight bearer cheques, which were withdrawn on the same day i.e. 07.02.2014. On the very same day, the sale deed was registered in favour of the assessee. Thus, from the aforesaid facts, it is very much clear that the transaction between the parties and the payment made and purpose of the payment is well established and genuine.

9. On a reading of section 40A(3) of the Act, it becomes clear that any expenditure exceeding the amount prescribed therein would not be allowed as deduction, if they are made other than by way of account payee cheque or bank draft. However, the first proviso to section 40A(3) makes it clear that no disallowance under sub-section (3) to section 40A should be made in such cases and under such circumstances as may be prescribed, having regard to the nature and extent of banking facilities available, consideration of business expedience and other relevant factors. Rule 6DD prescribes the exceptions under which section 40A(3) would not apply. Consistent with the substantive provisions of section 40A(3) of the Act, sub-rule (j) of Rule 6DD was introduced. Sub-rule (j)

of Rule 6DD, which existed in its original form from 01.04.1970 to 27.07.1995, prior to its amendment, reads as under:

> *"Rule 6DD:*
> *(j) in any other case where the assessee satisfies the Income-tax Officer that the payment could not be made by way of a crossed cheque drawn on a bank or by a crossed bank draft.*
> *a. Due to exceptional or unavoidable circumstances; or*
> *b. because payment in the manner aforesaid was not practicable, or would have caused genuine difficulty to the payee, having regard to the nature of the transaction and the necessity for expeditious settlement thereof."*

10. Thus, on a reading of the first proviso to section 40A(3) read with Rule 6DD(j) as reproduced hereinabove, it is very much clear that no disallowance under section 40A(3) can be made, if the transaction for which the payment is made is genuine and due to business expediency and other compelling factors payment was required in cash. In case of Attar Singh Gurmukh Singh Vs. ITO, 191 ITR 667 (SC), the Hon'ble Supreme Court while interpreting the provisions of section 40A(3) read with Rule 6DD 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 (API. If the payment is made by a crossed cheque drawn 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."

11. As could be seen from the aforesaid decision of the Hon'ble Supreme Court, though, constitutional validity of section 40A(3) of the Act was upheld, however, the Hon'ble Supreme Court observed that the provisions are not intended to restrict business activity and the restrictions 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. While interpreting the provisions of section 40A(3) and Rule 6DD(j), the Hon'ble Supreme Court 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 bonafide transaction are not taken out of the sweep of 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 under 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.

12. Following the aforesaid decision of the Hon'ble Apex Court, the Hon'ble Gujarat High Court in case of Anupam Tele Services (supra) has observed as under:

> *"17. Rule 6DD of the Income Tax Rules, 1962 provides for situations under which disallowance under section 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, clause (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 Section 40A and in particular sub-clause (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.

As held by the Apex Court in case of Attar Singh Gurmukh Singh (supra), "..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 undisclosed sources. The terms of section 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 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 business transactions and to prevent the use of unaccounted money or reduce the chances to use black money for business transactions."

19. 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 rule 6DD(j) of the Income-tax Rules, 1962.

20. 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 Appellate Commissioner. The Tribunal also did not disturb such facts but relied solely on Rule 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 Rule 6DD, consequences envisaged in Section 40A(3) of the Act must follow.

21. 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 cooperative bank would not do, since the realization takes a longer time;
(ii) the assessee was, therefore, required to make cash payments only;
(iii) Tata Teleservices Limited 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 Teleservices Limited 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.

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

23. We notice that the Division Bench of the Rajasthan High Court in case of Suit. Harshila Chordia v. ITO f2008] 298 ITR 349 /Rail had observed that the exceptions contained in Rule 6DD are not exhaustive and that the said rule must be interpreted liberally.

24. Before closing, we may clarify that the above observations would apply only to the cash payments made by the assessee to the Tata Teleservices Limited. No such peculiar facts arise in case of payments made to the other two agencies viz., Rajvi Enterprise and R.D Infocom. Learned counsel for the appellant also clarified that this appeal is confined to only the payments made to Tata Teleservices Limited and no others.

13. In case of A. Daga Royal Arts Vs. ITO (supra), the Coordinate Bench while dealing with identical issue has observed that even after amendment of Rule 6DD(j), the legal exposition propounded by the Hon'ble Supreme Court regarding consideration of expediency and other relevant factors cannot be considered to be diluted as the rules framed by way of delegated legislation cannot override the substantive legislation in form of section 40A(3) which has not changed its character. Following observations of the Coordinate Bench would be of much relevance:

> *"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 ITA No. 1065/JP/2016 M/s A Daga Royal Arts, Jaipur Vs ITO, Jaipur 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."

14. The ratio laid down in the aforesaid judicial precedents squarely apply to the facts of the assessee's case due to following reasons:

(a) The genuineness of the payment made was not doubted.

(b) The recipient of the amount made a pre-condition for registration of sale deed only on payment of cash.

(c) Due to business expediency the assessee had to make the payment in cash.

15. The other decisions cited by learned counsel also supports this view. Even otherwise also, various judicial precedents have been cited before us laying down the ratio that no disallowances under section 40A(3) of the Act can be made where seller of agricultural land insisted on payment in cash. Thus, applying the legal principles enunciated in the judicial precedents cited before us, we hold that the disallowance made under section 40A(3) of the Act is unsustainable. Accordingly, we delete it.

16. In the result, the appeal is allowed.

ITA No. 2958/Del/2018 (Appeal by Revenue)

17. In ground no. 1, the Revenue has challenged the deletion of disallowance of Rs.55,42,561/- representing provision of bad debts. Briefly the facts are, in course of assessment proceedings, the Assessing Officer while verifying the profit and loss account noticed that the assessee had debited an amount of Rs.55,42,561/- towards bad debts. Alleging that the assessee failed to furnish any documentary evidence to prove that income with regard to the corresponding bad debts has been recognized in the previous year to satisfy the condition of section 36(1)(vii) of the Act, the Assessing Officer disallowed the claim. While deciding the issue in appeal, learned Commissioner (Appeals), being convinced with the submission of the assessee, deleted the disallowance.

18. We have considered rival submissions and perused the materials on record. The facts emanating on record indicate that the assessee had actually written off the amount in dispute in its books of account. Further, it is evident, the bad debt written off pertains to the debtor to whom maintenance services were provided and maintenance charge on account of such services were accounted in the books of account in past assessment years and were offered to tax. Therefore, the apprehension of the Assessing

Officer appears to be unfounded. In any case of the matter, after amendment of section 36(1)(vii) of the Act w.e.f. 01.04.1989, the condition precedent for allowance of deduction is actual writing off of the bad debts in the books of account. This is the ratio laid down by the Hon'ble Supreme Court in case of TRF Ltd. Vs. CIT, 323 ITR 397. That being the position in law, we do not find any deficiency in the decision of the learned Commissioner (Appeals). Accordingly, ground raised is dismissed.

19. The next issue arising for consideration is deletion of disallowance of Rs.1,09,84,190/-. In course of assessment proceeding, the Assessing Officer noticed that the assesse had incurred expenditure of Rs.4,30,34,437/- under the head 'property maintenance' and Rs. 9,02,325/- under the head Miscellaneous Expenses. After calling for the necessary details and examining them, the Assessing Officer disallowed 25% of the total expenditure claimed, which amounted to Rs.1,09,84,190/-. Being convinced with the submission of the assessee, learned Commissioner (Appeals) deleted the disallowance.

20. We have considered rival submissions and perused the materials on record. On a perusal of the observations of the Assessing Officer, it is observed, he has made the disallowance on

purely ad-hoc basis without any valid reasoning. As could be seen from the facts on record, the assessee is engaged in three business segments viz. electricity supply, estate management services and real estate division. The maintenance division is known as Sunrise Management & Estate Services. It is observed that the assessee has adopted this practice of raising bills in the name of Sunrise Management and Estate Services from past years and continuing with the same. As rightly observed by learned Commissioner (Appeals), all the details relating to the expenses were furnished before the Assessing Officer and further, the payments were made through banking channel. In fact, the assessee has deducted tax at source wherever applicable. It is also a fact on record that in the preceding assessment years, such expenditure incurred by the assessee have been accepted by the Assessing Officer. The Assessing Officer has not pointed out any specific deficiency in the documentary evidences furnished by the assessee. Thus, ad-hoc disallowance made by the Assessing Officer without any valid reason cannot be sustained. Accordingly, we uphold the decision of learned Commissioner (Appeals) by dismissing the ground.

21. In the result, the appeal is dismissed.

22. To sum up, the assessee's appeal is allowed and Revenue's appeal is dismissed.

Order pronounced in the open court on 29th August, 2022

Sd/-	***Sd/-***
(PRADIP KUMAR KEDIA)	**(SAKTIJIT DEY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 29th August, 2022.
RK/-
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi