

**IN THE INCOME TAX APPELLATE TRIBUNAL PATNA BENCH, PATNA  
VIRTUAL HEARING AT KOLKATA**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER  
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.49/Pat/2020  
Assessment Year: 2012-13**

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| <b>Smt. Heera Mani Devi, L/H<br/>of Late Shri Ashok Kumar,<br/>C/o Arogya Drug<br/>Distributor, Prafulla Palace,<br/>Govind Mitra Road, Ashok<br/>Raj Path,<br/>Patna-800004<br/>(PAN: AIVPK6223C)</b> | <b>Vs.</b> | <b>Income-tax Officer,<br/>Ward-4(1),<br/>Patna.</b> |
| <b>(Appellant)</b>   |            | <b>(Respondent)</b>                                  |

Present for:

Appellant by : Shri Ashish Agrawal, CA  
Respondent by : Shri Rupesh Agrawal, Sr. DR

Date of Hearing : 28.04.2022

Date of Pronouncement : 18.07.2022

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal by the assessee is directed against the order of Id. CIT(A), Hazaribagh vide order No. ITBA/APL/S/250/2019-20/1026823282(1) dated 20.03.2020 for A.Y. 2012-13 passed against the assessment order u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') by ITO, Ward-4(1), Patna, dated 18.03.2015.

2. There is a delay of 41 days in filing the instant appeal, for which a petition for condonation of delay along with affidavit which is placed on record. We note that the order of Ld. CIT(A) is dated 30.03.2020 which falls during the period of lockdown owing to pandemic of Covid-2019. The present appeal has been filed on 29.06.2020. We have heard both the sides and find that vide order dated 10.01.2022, Hon'ble Supreme Court has

directed that the period from 15.03.2020 to 28.02.2022 is to be excluded for the purpose of computing the limitation period during the COVID-19 pandemic. Further, a period of 90 days is allowed after 28.02.2022 vide same order. Considering the facts and the explanation of the assessee, we condone the delay in filing the appeal and admit it for adjudication.

3. Further, we note that the assessee Late Ashok Kumar expired on 16.12.2019, fact of which was brought on record before the Ld. CIT(A) in the course of appellate proceeding before him. His wife Smt. Hira Mani Devi was brought on record as the legal heir.

4. Assessee has raised solitary issue in this appeal relating to disallowance of Rs.17,43,683/- made by the Ld. AO on account of payment made in cash by invoking the provisions of section 40A(3) of the Act which has been confirmed by the Ld. CIT(A). Before us Shri Ashish Agarwal, CA represented the assessee and Shri Rupesh Agrawal, Sr. DR represented the department.

5. Brief facts of the case are that the assessee is engaged in the business of trading of medicine and is the stockist of H. L. Medicines. The assessee filed his return of income on 28.09.2012 reporting total income of Rs.6,67,340/-. Statutory notices were issued and served on the assessee which were complied by furnishing all the details including production of cash book, bank book, purchase ledger, sales ledger etc., which were examined on test check basis by the Ld. AO. In the course of assessment proceedings, Ld. AO noted that assessee has made payments in cash for purchases from M/s. Trishul Agency which exceeded Rs.20,000/- in a single day which is contrary to the provisions of section 40A(3) of the Act. It was noted by the Ld. AO that total

payment of Rs.17,43,683/- were made for purchase of medicine in cash for which he proceeded to disallow the said business expenditure by applying provisions of section 40A(3) of the Act and added it back to the total income of the assessee. Aggrieved, the assessee went in appeal before the Ld. CIT(A) who also sustained the addition. Aggrieved, the assessee is now in appeal before the Tribunal.

6. Before us, Ld. Counsel for the assessee placed on record a written submission along with relevant documentary evidence in the paper book containing 37 pages. Ld. Counsel submitted that invoices of M/s. Trishul Agency were raised on different dates, all of which are below Rs.20,000/- and for which a ledger confirmation from M/s. Trishul Agency was referred to, placed in the paper book at pages 1-3. He pointed out that the purchases were made against different bills and none of such bills exceeded Rs.20,000/-.

6.1. He also placed reliance on the CBDT Circular no.1/2009 dated 27.03.2009 to clarify on applicability of section 40A(3) of the Act which pertains to high value payments. It was submitted by him that the term 'high value payment' ought to be considered in respect of payments where the concerned bill or invoice is of high value. He emphasized on the fact that where in the present case all the bills/invoices per se are of value less than Rs.20,000/-, payments made against such invoices cannot be considered as high value transactions to invoke the provisions of section 40A(3) of the Act. He further emphasized on the fact that the value of each invoice would not be hit by the provisions of section 40A(3) of the Act as each invoice has to be considered as a separate contract.

6.2. He also pointed out to the amendment made in section 40A(3) of the Act by the Finance Act, 2008 w.e.f. 01.04.2009 whereby the aggregate of payment against any expenditure in cash exceeding Rs.20,000/- is covered by the said section. Ld. Counsel referred to the intent and purpose of bringing out this amendment which is an anti tax evasion measure. In the present case of the assessee, ld. Counsel submitted that there is no occasion of any tax evasion measure adopted by the assessee.

6.3. Ld. Counsel referred to the factual findings noted by the Ld. CIT(A) in para 2.7 of his order wherein he noted that “it is a fact that each bill is less than R.20,000/- “and also a fact that identity of the person from whom purchases have been made, is established.” Ld. Counsel, thus, strongly submitted that there is no dispute on the identity of person from whom the purchases have been made. The purchases so made from M/s. Trishul Agency are not in dispute which are duly recorded in the regular books of account which have been subjected to tax audit.

6.4. Further, he submitted that the sales made by the assessee are not in dispute, books of accounts have not been rejected by the ld. AO, the purchase ledger and sales ledger as well as cash book was furnished during the course of assessment proceedings all of which were examined on test check basis by the Ld. AO. Fact of all these submissions is on record. He thus, strongly submitted that authorities below have wrongly made the disallowance of genuine purchases made by the assessee from M/s. Trishul Agency which ought to be deleted.

6.5. To buttress his contentions, Ld. Counsel relied on the decisions of Coordinate bench of ITAT, Patna in the case of Infotica vs. ITO in ITA No. 51/Pat/2013 dated 02.12.2016 and Ambica Prasad Gupta vs. ITO

in ITA No. 66-67/Pat/2012 dated 25.11.2016 on the aspect of consideration of business expediency. Ld. Counsel also placed reliance on the decision of Hon'ble jurisdictional High Court, Patna in the case of ACIT vs. Sunil Kumar in Misc. Appeal No. 30 of 2012, dated 17.02.2016, all of which are placed in the paper book.

7. Per contra, Ld. Sr. DR submitted that Ld. CIT(A) has rightly upheld the disallowance made by the ld. AO by noting that even though identity of the person from whom purchases having been made is established but the source of cash payment have not been established. He further submitted that Ld. CIT(A) noted that test of business expediency has also not been proved by the assessee and he thus supported and relied on the orders of the authorities below.

8. We have heard rival submissions and perused the material on record. The issue for our consideration is in respect of disallowance made u/s. 40A(3) of the Act for the payments made in cash in excess of Rs.20,000/- for the purchases made by the assessee from M/s. Trishul Agency. From the perusal of the material placed on record and submissions made before us, it is an admitted fact that the genuineness of the party has not been doubted. Furthermore, it is an undisputed fact that all the payments of purchases made by the assessee from M/s. Trishul Agency pertains to invoices having value less than Rs.20,000/- each. It is also an admitted fact on record from the perusal of ledger account of both the parties i.e. the purchaser (assessee) and seller (M/s. Trishul Agency) that the purchases and corresponding sales are duly recorded in their respective books of accounts. Further, the purchases and sales registers were examined by the Ld. AO and from the perusal of the impugned order, there is no defect which has been pointed out, both for purchases and sales made by the assessee. Also it

is important to note that the books of account were subjected to audit u/s. 44AB of the Act and have not been rejected by the Ld. AO in the course of assessment proceeding.

8.1 From the order of Ld. CIT(A), we note that the basis for sustaining the addition are twofold, wherein the Ld. CIT(A) noted that source of cash payment and the test of business expediency have not been established. In respect of source of cash payment made by the assessee, it is noted that the cash book and purchase ledger were examined by the Ld. AO and it was submitted by the Ld. Counsel that the cash as available on the date of payment was out of the sale proceeds of the business which has been duly reflected in the cash book, more particularly when the books of accounts including the cash book have been subjected to tax audit and examination by the Ld. AO.

8.2 On the aspect of considerations of business expediency, we note that the bills raised for the purchases made are all below the value of Rs.20,000/- each, though the payments have been made in excess of Rs.20,000/- in aggregate on a single day. For this, we note from the orders of the authorities below that genuineness of the expenses have not been doubted.

8.3 The provisions of section 40A(3) of the Act cannot be made applicable to the facts of the instant case. If we look into the intention behind the introduction of provisions of section 40A(3) of the Act, we find that the said provision was inserted by Finance Act, 1968 with the object of curbing expenditure in cash and to counter tax evasion. We note that the purpose of section 40A(3) is only preventive and to check evasion of tax and flow of unaccounted money or to check transaction which are not genuine and may be put up as camouflage to evade tax

by showing fictitious or false transactions. Admittedly, it is not the case in the facts of the assessee before us.

8.4 We draw force from the decision of the coordinate bench of ITAT, Patna Bench in the case of Infotica (supra) relevant portion of which is extracted below for ease of reference:

18. We have heard the rival contentions of both the parties and perused the materials available on record. From the aforesaid discussion we find that the AO has invoked the provision of section 40A(3) and accordingly disallowed a sum of Rs. 4,13,63,240.00 which was subsequently confirmed by the order of Id. CIT(A). Now the issue for our consideration arises so as to whether the disallowance under section 40A(3) is sustainable in the light of the facts & circumstances. From the perusal of facts of the case we find that admittedly the genuineness of the parties have not been doubted. The payment was made to the partner of the firm against the purchase of the goods. In such circumstances we find that there was no such exception in rule 6DD for allowing the payment in cash in the circumstances discussed above. We find the from the AY 2009-10, the earlier ceiling of Rs. 20,000.00 for cash payment per transaction

has been amended. Now the ceiling of Rs. 20,000.00 will be aggregate in one day of all such transactions. The list provided under rule 6DD of the IT Rules is exhaustive and not inclusive. However, we also find from the order of lower authorities that genuineness of expenses has not been doubted. Therefore in our view, the provisions of section 40A(3) could not be made applicable to the facts of the instant if we go into the intention behind introduction of provisions of section 40A(3) of the Act at this juncture. We find that the said provision was inserted by Finance Act 1968 with the object of curbing expenditure in cash and to counter tax evasion. The CBDT Circular No. 6P dated 06.07.1968 reiterates this view that "this provision is designed to counter evasion of a tax through claims for expenditure shown to have been incurred in cash with a view to frustrating proper investigation by the department as to the identity of the payee and reasonableness of the payment."

19. In this regard, it is pertinent to get into the following decisions on the impugned subject:-

Attar Singh Gurmukh Singh vs ITO reported in (1991) 191 ITR 667 (SC)

"Section 40A(3) of the Income-tax Act, 1961, which provides that expenditure in excess of Rs. 2,500 (Rs. 10,000 after the 1987 amendment) would be allowed to be deducted only if made by a crossed cheque or crossed bank draft (except in specified cases) is not arbitrary and does not amount to a restriction on the fundamental right to carry on business. If read together with Rule 6DD of the Income-tax Rules, 1962, it will be clear that the provisions are not intended to restrict 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 upon to enable the assessing authority to ascertain whether the payment was genuine or whether it was out of income from undisclosed sources. The terms of section 40A(3) are not absolute. Consideration 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



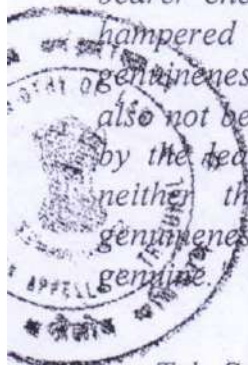
they are intended to regulate business transactions and to prevent the use of unaccounted money or reduce the chances to use black money for business transactions.”

CIT vs CPL Tannery reported in (2009) 318 ITR 179 (Cal)

“The second contention of the assessee that owing to business expediency, obligation and exigency, the assessee had to make cash payment for purchase of goods so essential for carrying on of his business, was also not disputed by the AO. The genuinity of transactions, rate of gross profit or the fact that the bonafide of the assessee that payments are made to producers of hides and skin are also neither doubted nor disputed by the AO. On the basis of these facts it is not justified on the part of the AO to disallow 20% of the payments made u/s 40A(3) in the process of assessment. We, therefore, delete the addition of Rs. 17,90,571/- and ground no.1 is decided in favour of the assessee. “

CIT vs Crescent Export Syndicate in ITA No. 202 of 2008 dated 30.7.2008 – Jurisdictional High Court decision

“It also appears that the purchases have been held to be genuine by the learned CIT(Appeal) but the learned CIT(Appeal) has invoked Section 40A(3) for payment exceeding Rs.20,000/- since it is not made by crossed cheque or bank draft but by bearer cheques and has computed the payments falling under provisions to Section 40A(3) for Rs.78,45,580/- and disallowed @20% thereon Rs.15,69,116/-. It is also made clear that without the payment being made by bearer cheque these goods could not have been procured and it would have hampered the supply of goods within the stipulated time. Therefore, the genuineness of the purchase has been accepted by the ld. CIT(Appeal) which has also not been disputed by the department as it appears from the order so passed by the learned Tribunal. It further appears from the assessment order that neither the Assessing Officer nor the CIT(Appeal) has disbelieved the genuineness of the transaction. There was no dispute that the purchases were genuine.”



Anupam Tele Services vs ITO in (2014) 43 taxmann.com 199 (Guj)

“Section 40A(3) of the Income-tax Act, 1961, read with rule 6DD of the Income-tax Rules, 1962 – Business disallowance – Cash payment exceeding prescribed limits (Rule 6DD(j))-Assessment year 2006-07 – Assessee was working as an agent of Tata Tele Services Limited for distributing mobile cards and recharge vouchers – Principal company Tata insisted that cheque payment from assessee’s co-operative bank would not do, since realization took longer time and such payments should be made only in cash in their bank account – If assessee would not make cash payment and make cheque payments alone, it would have received recharge vouchers delayed by 4/5 days which would severely affect its business operation – Assessee, therefore, made cash payment – Whether in view of above,

*no disallowance under section 40A (3) was to be made in respect of payment made to principal - Held, yes [Paras 21 to 23] [in favour of the assessee]"*

Sri Laxmi Satyanarayana Oil Mill vs CIT reported in (2014) 49 taxmann.com 363 (Andhrapradesh High Court)

*"Section 40A(3) of the Income-tax Act, 1961, read with Rule 6DD of the Income-tax Rules, 1962 – Business disallowance – Cash payment exceeding prescribed limit (Rule 6DD) – Assessee made certain payment of purchase of ground nut in cash exceeding prescribed limit – Assessee submitted that her made payment in cash because seller insisted on that and also gave incentives and discounts – Further, seller also issued certificate in support of this – Whether since assessee had placed proof of payment of consideration for its transaction to seller, and later admitted payment and there was no doubt about genuineness of payment, no disallowance could be made under section 40A(3) – Held, yes [Para 23] [In favour of the assessee]"*

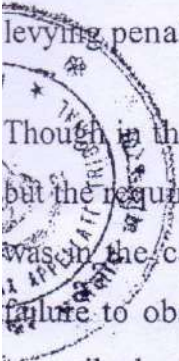
CIT vs Smt. Shelly Passi reported in (2013) 350 ITR 227 (P&H)

*In this case the court upheld the view of the tribunal in not applying section 40A(3) of the Act to the cash payments when ultimately, such amounts were deposited in the bank by the payee.*

8.5 We also note that the Coordinate bench of ITAT Patna in the case of Ambika Prasad Gupta (supra) has dealt with the similar issue on the objects of the provisions of section 40A(3), relevant extract of which is reproduced for ease of reference:

12.2 It is pertinent to notice that the primary object of enacting section 40A(3) was two folds, firstly, putting a check on trading transactions with a mind to evade the liability to tax on income earned out of such transaction and, secondly, to inculcate the banking habits amongst the business community. Apparently, this provision was directly related to curb the evasion of tax and inculcating the banking habits. Therefore, the consequence, which were to befall on account of non-observation of section 40A(3) must have nexus to the failure of such object. Therefore, the genuineness of the transactions it being free from vice of any device of evasion of tax is relevant consideration.

12.3. The Hon'ble Apex Court in the case of CTO vs Swastik Roadways reported in (2004) 3 SCC 640 had held that the consequences of non-compliance of Madhyapradesh Sales Tax Act, which were intended to check the evasion and avoidance of sales tax were significantly harsh. The court while upholding the constitutional validity negated the existence of a *mens rea* as a condition necessary for levy of penalty for non-compliance with such technical provisions required held that *"in the consequence to follow there must be nexus between the consequence that befall for non-compliance with such provisions intended for preventing the tax evasion with the object of provision before the consequence can be inflicted upon the defaulter."* The Hon'ble Supreme Court has opined that the existence of nexus between the tax evasion by the owner of the goods and the failure of C & F agent to furnish information required by the Commissioner is implicit in section 57(2) and the assessing authority concerned has to necessarily record a finding to this effect before levying penalty u/s 57(2).



Though in the instant case, the issue involved is not with regard to the levy of penalty, but the requirement of law to be followed by the assessee was of a technical nature as was in the case of Swastik Roadways (3 SGC 640) and the consequence to fall for failure to observe such norms in the present case are much higher than which were prescribed under the Madhya Pradesh Sales Tax Act. Apparently, it is a relevant consideration for the assessing authority under the Income Tax Act that before invoking the provisions of section 40A(3) in the light of Rule 6DD as clarified by the Circular of the CBDT that whether the failure on the part of the assessee in adhering to requirement of provisions of section 40A(3) has any such nexus which defeats the object of provision so as to invite such a consequence. We hold that the purpose of section 40A(3) is only preventive and to check evasion of tax and flow of unaccounted money or to check transactions which are not genuine and may be put as camouflage to evade tax by showing fictitious or false transactions. Admittedly, this is not the case in the facts of the assessee herein. The assessee had made payments to the identified parties as evident from the submission made to the lower authorities. It is also pertinent to note that the Hon'ble Rajasthan High Court in the case of

*Smt. Harshila Chordia vs ITO reported in (2008) 298 ITR 349 (Raj) had held that the exceptions contained in Rule 6DD of Income Tax Rules are not exhaustive and that the said rule must be interpreted liberally.*

13. In view of the aforesaid facts and circumstances and respectfully following the judicial precedents relied upon hereinabove, we have no hesitation in upholding the order of Ld. CIT(A). We hold accordingly. Accordingly, this ground of the Revenue is dismissed.

9. Considering the aforesaid facts and circumstances of the case and respectfully following the judicial precedents relied on hereinabove, we direct the AO to delete the addition of Rs.17,43,683/- made by invoking section 40A(3) of the Act. Accordingly, this appeal of the assessee is allowed.

10. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 18<sup>th</sup> July, 2022

Sd/-

Sd/-

**(SANJAY GARG)**  
**JUDICIAL MEMBER**

**(GIRISH AGRAWAL)**  
**ACCOUNTANT MEMBER**

Kolkata, Dated: 18.07.2022

JD, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. CIT(A), Hazaribagh
4. The CIT-
5. The DR, ITAT, Patna Bench, Patna

//True Copy//

By Order

Sr. Pvt. Secy  
 ITAT, Patna Bench, Patna