

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No.1313/Ahd/2019
Asstt.Year : 2015-16

M/s.Piprani Equipment P.Ltd. FF-4, Amar Complex Nr.Amin Equipments P.Ltd. Sarkhej Road Ahmedabad. PAN : AAGCP 6503 L	Vs	ITO, Ward-3(1)(2) Ahmedabad.
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(Applicant)		(Responent)
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Assessee by :	Shri Hardik Vora, AR
Revenue by :	Shri Mukesh Thakwani, DR

सुनवाई की तारीख/Date of Hearing : 05/09/2022

घोषणा की तारीख /Date of Pronouncement: 02/12/2022

आदेश/ORDER

The present appeal has been filed by the assessee against order passed by the Commissioner of Income Tax(Appeals)-9, Ahmedabad in short referred to as ld.CIT(A)) under section 250(6) of the Income Tax Act, 1961 ("the Act" for short), dated 18.6.2019 pertaining to Asst.Year 2015-16.

2. Sole issue in the present appeal relates to disallowance of expenses incurred in cash amounting to Rs.37,24,414/- as per provisions of section 40A(3) of the Act. The grounds raised by the assessee in this regard are as under:

"1. The ld.CIT(A) has erred in confirming the addition of Rs.37,01,314/- made by AO in his order u/s.143(3) by way of disallowance made under section 40(3) in respect of cash

purchase of old vehicles from unknown sellers for business of dealing of old vehicles, equipment's and machineries.”

3. Brief facts relating to the case are that the assessee company was engaged in the business of purchase and sale of used vehicles and construction equipments/machineries and old vehicles were purchased from the individual persons who were working as small roadside contractors and were residents of distant and separate states. The gross sales/receipts of the business were of Rs.64,71,100/- and purchases were of Rs.72,20,414/-. Thus, the appellant company was not subjected to audit as per the provisions of section 44AB of the Act. However, the assessee-company had obtained the tax audit report and furnished the same voluntarily. Based on the remarks made in the said tax audit report, the A.O. observed that the assessee had made payment in cash exceeding the limit specified u/s 40(A)(3) of the Act on purchase of five old vehicles/JCB Machines on various s dates as under:

Sr No	Name of the seller	Date of payment made to Shri Mohan Singh Rawat or his authorized representative	Date of possession of the asset i.e. date on which purchase booked in books of the	Amount
1	Jaychandra Rammanohar	03-08-2014	06.08.2014	6,89,500/-
2	Vimalchand Rammanohar	24-08-2014	01.09.2014	7,35,900/-
3	Jayveer Singh Chandrik Prasad	28-09-2014	30.09.2014	8,44,650/-
4	Itzarali Sardar All	28-09-2014	06.10.2014	6,45,632/-
5	Rajesh Kumar ShakruNymatpur	23-11-2014	26.11.2014	7,85,632/-

			Total	37,01,314/-
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4. The A.O. held that since the payments to these persons were made in cash and in violation of the provisions of section 40A(3) of the Act read with Rule 6DD of the Income Tax Rules, 1962 (in short Rules) the same were not allowable. During the course of assessment proceedings, the assessee contended that the purchasers as well as sellers were mostly roadside mini freight carrier owners & uneducated persons and most of them did not have any banking channel and the sellers insisted on cash payment immediately so that they could purchase another vehicle or meet with some urgent financial needs. The assessee made the cash payments to these vendors as they were not known, trust was not built up and they were not ready to allow the use of third party bank accounts. The A.O., however, rejected these contentions and held that the exceptions provided in Rule 6DD of the Rules are not applicable to the transactions made by the assessee. He accordingly made disallowance of Rs.37,01,314/- after considering the submissions made by the assessee.

5. Before the Id.CIT(A), the assessee reiterated his contentions and also filed additional evidences, being affidavit of the seller of the vehicles with their identity proofs. All the deponents categorically stated that they did not have any bank account in any bank. Further, the assessee explained the mode in which he conducted his business stating that since he was dealing in small motor vehicles by way of purchases from whosoever and wherever it was available, it was necessary for him to deal through procurement agents and the impugned transaction of purchase of vehicles in cash in the present case had been undertaken through one such agent Shri Mohansinh Rawat. All details of the said person were furnished

and on the direction of the AO he also appeared for examination and confirmed to the AO of having received cash from the assessee for making payment to the sellers of vehicles in cash. The assessee further relied on various judgments of Hon'ble High Courts in support of its contentions that having proved genuineness of the transaction no disallowance under section 40A(3) was warranted. The Id.CIT(A) considered the allowability of assessee's claim the impugned transactions not being covered u/s 40A(3) of the Act in the light of Rule 6DD of the Rules, which prescribed circumstances in which the payment in cash could be made without inviting any disallowance under section 40A(3) of the Act. He found that the assessee's explanation fit only in two circumstances mentioned in the rule viz. (i) in clause 'g' where payment made in village or town not served by the bank is specified to be exempt from rigour of section 40A(3) of the Act; and (ii) in clause (k) which stipulates payment made in cash by any person to his agent who is required to make further payment in cash on behalf of the assessee. Referring to both clauses, he found that the assessee's case did not fit into either, since in both the cases. He found the assessee's case as not fitting into clause-g of Rule 6DD noting that where the assessee operated from and where the sellers resided both were serviced by the banks. As for applicability of clause (k) he found that it was not proved beyond doubt that the agent who received cash from the person selling vehicles was required to make payment in cash for goods and services on behalf of such persons to third person. His finding on para 5.1 to 5.4 of the order is as under:

5.1 The analysis of the above facts as narrated in brief clearly leads to the dispute as to whether the appellant had violated the provisions of section 40A(3) of the Act and whether the exceptions provided in Rule 6DD of the I.T. Rules were applicable or not ? Therefore, it is imperative to understand the circumstances provided in Rule 6DD which is reproduced as under:-

“Cases and circumstances in which a payment or aggregate of payments exceeding twenty thousand rupees may be made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft.

6DD. No disallowance under sub-section (3) of section 40A shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-section (3A) of section 40A where a payment⁵⁹ or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees⁶⁰ in the cases and circumstances specified hereunder, namely :—

- ⁶¹(a) where the payment is made to—
- (i) the Reserve Bank of India or any banking company⁶² as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);
 - (ii) the State Bank of India or any subsidiary bank⁶³ as defined in section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959);
 - (iii) any co-operative bank or land mortgage bank;
 - (iv) any primary agricultural credit society or any primary credit society as defined under section 56 of the Banking Regulation Act, 1949 (10 of 1949);
 - (v) the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956);
- ⁶⁴(b) where the payment is made to the Government and, under the rules framed by it, such payment is required to be made in legal tender^{64a};
- (c) where the payment is made by—
- (i) any letter of credit arrangements through a bank;
 - (ii) a mail or telegraphic transfer through a bank;
 - (iii) a book adjustment from any account in a bank to any other account in that or any other bank;
 - (iv) a bill of exchange made payable only to a bank;
 - (v) the use of electronic clearing system through a bank account;

(vi) a credit card;

(vii) a debit card.

Explanation.—For the purposes of this clause and clause (g), the term “bank” means any bank, banking company or society referred to in sub-clauses (i) to (iv) of clause (a) and includes any bank [not being a banking company⁶⁵ as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949)], whether incorporated or not, which is established outside India;

⁶⁶(d) where the payment is made by way of adjustment against the amount of any liability incurred by the payee for any goods supplied or services rendered by the assessee to such payee;

⁶⁷(e) where the payment is made for the purchase of—

(i) agricultural or forest produce; or

(ii) the produce of animal husbandry (including livestock, meat, hides and skins) or dairy or poultry farming; or

(iii) fish or fish products⁶⁸; or

(iv) the products of horticulture or apiculture,

to the cultivator, grower or producer of such articles, produce or products;

(f) where the payment is made for the purchase of the products manufactured or processed without the aid of power in a cottage industry, to the producer of such products;

⁶⁹(g) **where the payment is made in a village or town, which on the date of such payment is not served by any bank, to any person who ordinarily resides, or is carrying on any business, profession or vocation, in any such village or town;**

(h) where any payment is made to an employee of the assessee or the heir of any such employee, on or in connection with the retirement, retrenchment, resignation, discharge or death of such employee, on account of gratuity, retrenchment compensation or similar terminal benefit and the aggregate of such sums payable to the employee or his heir does not exceed fifty thousand rupees;

(i) where the payment is made by an assessee by way of salary to his employee after deducting the income-tax from salary in accordance with the provisions of section 192 of the Act, and when such employee—

(i) is temporarily posted for a continuous period of fifteen days or more in a place other than his normal place of duty or on a ship; and

(ii) does not maintain any account in any bank at such place or ship;

⁷⁰(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;

(k) where the payment is made by any person to his agent⁷¹ who is required to make payment in cash for goods or services on behalf of such person;

(l) where the payment is made by an authorised dealer or a money changer against purchase of foreign currency or travellers cheques in the normal course of his business.

Explanation.—For the purposes of this clause, the expressions “authorised dealer” or “money changer” means a person authorised as an authorised dealer or a money changer to deal in foreign currency or foreign exchange under any law for the time being in force.]

5.2 The appellant did not put forth any contention as to under which clause of Rule 6DD of the I.T. Rules, the appellant's case falls. However, the submissions made by the appellant supported with the affidavits of the sellers of the vehicles suggest that the appellant's case would fall in category (g) of the Rule 6DD which specifies where the payment is made in a village or town which on the date of such payment is not served by any bank, to any person who ordinarily resides, or is carrying on any business, profession or vocation, in any such village or town. The close perusal of the money receipts obtained from all the five persons named above does not lead to the conclusion that the payments were made in a village or town on the dates mentioned in the money receipts could not be served by any bank to these persons who claimed to be residing in the village or town mentioned in the money receipt as well as in the sworn affidavits (not duly notarized or identified by the Notary). Therefore, the appellant's claim for the exception provided under Rule 6DD(g) of the I.T. Rules cannot be substantiated.

5.3 Further, it is an undisputed fact that the appellant is a company comprising of the Board of Directors and has its own bank accounts and the cash has been found to be withdrawn from the said bank accounts. However, the appellant did not file the copy of any of the said bank accounts and also the details of other vehicles purchased by payments made through cheques. It is true that the persons to whom the vehicles/used machinery sold were not residents of the state of Gujarat but all were residents of the Uttar Pradesh state and in remote places. However, the appellant did not adduce any evidence to prove as to how the persons residing at the remote places were contacted and persuaded for selling their old vehicles or construction machinery.

5.4 It has been claimed by the appellant that one Shri Mohansingh Rawat, resident of 2/510, Vikas Nagar, Lucknow (U.P.) was acting as procurement agent of the appellant company and all the payments had been received by the procurement agent who obtained the money receipts and also signed the affidavits as witness when the old vehicles/construction machinery were

purchased. In the remand report, the A.O. has also stated that the purchasers and the sellers both were having bank accounts (without substantiating this fact through documents/information in his possession). **The A.O. has examined Shri Mohan Singh Rawat, a procurement agent who confirmed to have received the cash from these five persons at the places of U.P. state and handed over the cash to the appellant on the dates mentioned above with simultaneous possession of the used old vehicles or construction machineries but could not furnish the supporting evidences except the money receipts and the affidavits obtained from the sellers of the old vehicles. Thus, the appellant's case is attempted to be falling in clause (k) of Rule 6DD which stipulates that the payment in cash can be received by the agent of the appellant and the agent was required to make the payment in cash for goods or services on behalf of such persons. However, it is not proved beyond doubt that the agent who received the cash from the persons selling the vehicles was required to make the payment in cash for goods or services on behalf of such persons to third person. Thus, there is no applicability of Rule 6DD(k) even in the case of the appellant. Therefore, the cash payments made to five persons do not fall in any exception provided in Rule 6DD and therefore, the A.O. has rightly invoked the provisions of section 40A(3) of the Act and made the disallowance of Rs.37,01,314/- and is required to be confirmed.**

6. Before us, the ld.counsel of the assessee reiterated the contentions made before the lower authorities, pointing out that by filing affidavits of the sellers who had sold the vehicles to him against cash receipts and giving all their details including identity proofs the genuineness of the transactions had been established by him. He further pointed out even the agent who had acted on his behalf for procuring these vehicles had confirmed the fact of receipt of cash from the assessee for making payments to these persons before the AO. The ld.counsel for the assessee contended therefore that the assessee having proved genuineness of the transaction, there is no scope for making any disallowance under section 40A(3)

of the Act. He relied upon various decision of the Hon'ble High Courts, particularly jurisdictional High Court decision in the case of Anupam Tele Service Vs. ITO, (2014) 43 taxmann.com 199 (Guj).

The Id.DR relied on the order of the Id.CIT(A).

7. We have heard rival contentions gone through the orders of the authorities below and also case laws referred to before us. The issue before us related to the disallowance of expenses incurred in cash as per the provision of section 40A(3) of the Act. It is not disputed that before the Id.CIT(A) the assessee had furnished all evidences to prove genuineness of the transaction by giving all details of the seller of the vehicles, their names, address, identity proof and also furnished their affidavits affirming on oath that they had received cash on selling vehicles to the assessee, besides also stating that they had no bank account. It is also fact on record that the assessee had explained that he had purchased these vehicles through an agent, Shri Mohansingh Rawat, who was produced before the AO in remand proceedings, and the AO had examined him, when the said person had confirmed having received cash from the assessee for making payment in cash for purchases made from these very persons. We find that the Id.CIT(A) has upheld disallowance for the reason that circumstances in which the payment in cash was made by the assessee did not fall in any of the specified circumstances under Rule 6DD of IT Rules which notifies circumstances which are exempt from rigour of section 40A(3) of the Act.

As far as the assessee's case falling under section 6DD(g) is concerned, which specifies that payment made in village or town which on the date of payment is not served by any bank to any person ordinarily resides or carries on business there, we find that

the Id.CIT(A) has rightly held that such Rule is of no help to the assessee, since there was nothing on record to suggest existence of such circumstances. Even the Id.counsel for the assessee has been unable to demonstrate the same before us.

But as far as applicability of Rule 6DD(k) is concerned, we find that the Id.CIT(A) has clearly erred in holding that the same does not apply to the case of the assessee. The said Rule is reproduced herein for clarity:

6DD. No disallowance under sub-section (3) of section 40A shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-section (3A) of section 40A where a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account [account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as prescribed under rule 6ABBA, exceeds ten thousand rupees]

... ..

(k) where the payment is made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person;”

8. As is evident, the Rule specifies that where payment for expenses are made by a person to an agent who is required to make payment in cash on behalf of such person, then rigours of section 40A(3) are not applicable. In the present case, the Revenue does not dispute the fact that the assessee had made payment in cash not directly to the seller, but through his agent i.e. he had paid cash to the agent, who in turn paid to the seller for procuring vehicles from them. There is no finding of the Ld.CIT(A) to the effect that the agent was not genuine .Further it is a fact on record that the agent had appeared before the AO and confirmed the said fact to him that he had acted as agent for the assessee in the impugned transactions taking cash from him for making payment further to the sellers. The

sellers on affidavits have stated that they did not have any bank account and had therefore insisted on receiving money in cash. It is amply clear that the situation envisaged in clause (k) of Rule 6DD is clearly satisfied in the present case, and therefore, the assessee is entitled to be exempt from the rigours of section 40A(3). The ld.CIT(A), we find has mis-appreciated/misunderstood clause (k) of Rule 6DD of the Rules. The ld.CIT(A) we find has stated inapplicability of clause (k) by stating that it has not been proved beyond doubt that the agent who received cash from the person selling vehicles was required to make payment in cash for goods or services on behalf of such person to third party, which means that the ld.CIT(A) has understood clause (k) to mean that the agent should be receiving cash from the sellers. But this cannot be the interpretation since sellers are not required to make any payment. It is the buyer who is required to make payment. Therefore, interpretation of clause (k) by the Ld.CIT(A) makes no sense at all. Even otherwise, in view of the above, we hold that the assessee has sufficiently demonstrated existence of circumstance specified in clause (k) of Rule 6DD to be eligible for exemption from the rigours of section 40A(3) of the Act. Accordingly, disallowance made by invoking section 40A(3) of the Act of Rs.37,01,314/- is directed to be deleted. This ground of appeal is allowed.

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

Order pronounced in the Court on 2nd December, 2022 at Ahmedabad.

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

Ahmedabad, dated 02/12/2022

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