

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA-112-2019 (O&M)

Date of Decision: 25.2.2019

M/s Nangal Spun Pipe Co. Pvt. Ltd., Chandigarh

....Appellant.

Versus

Commissioner of Income Tax, Chandigarh

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.**

PRESENT: Mr. S.K. Mukhi, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. Delay of 158 days' in refiling the appeal is condoned.
2. This appeal has been filed by the assessee under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 27.3.2018 (Annexure A-3) passed by the Income Tax Appellate Tribunal, 'SMC' Bench, Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 1243/Chd/2016, for the assessment year 2012-13, claiming the following substantial questions of law:-

- I. Whether under the facts and circumstances of the case, the ITAT was justified in concurring with the order of authorities below in making addition of ₹ 24,77,000/- by erroneously invoking the provisions of Section 40A(3) which are not at all

applicable to the present case there being no claim of expenditure exceeding ₹ 20,000/- which is the basic requirement of invoking the impugned provisions and the account being a running account with its sister concern in view of judgment of **CIT v. Moti Lal Khatri 7 DTR (RAJ) 139?**

II. Whether the ITAT being the last fact finding body also failed to appreciate the correct facts and provisions of law and thereby confirming the addition of ₹ 24,77,000/- without any authority of law and in view of the trite law that no disallowance u/s 40A(3) could be made unless prima facie the amount has been claimed as expenditure above ₹ 20,000/- even though the authorities below and assessee had faltered on the facts and legal provisions?

III. Whether the ITAT and the authorities below failed to appreciate the correct facts and provisions of law and making addition of the same without any authority of law and in view of the trite law that no disallowance u/s 40A(3) could be made unless prima facie the genuineness or the identity of the payee is disputed which is also missing in the present case and the transactions being in the running account with the sister concern for which the books of accounts along with confirmed copy

of accounts having been produced before the ld. A.O., itself the very invoking of the provisions of Section 40A(3) and the impugned addition of ₹ 24,77,000/- to the income of the appellant is bad in law as so held in the judgment of **CIT v. Nikko Auto Ltd. 256 ITR 476 (P&H)** by this Hon'ble High Court?

IV. Whether, on the facts and circumstances of the case, the findings of the ITAT are perverse and against the evidences on record thus unsustainable in law?

3. Put shortly, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee is engaged in the business of manufacturing and trading of RCC pipes and allied products. The assessee filed its return of income on 26.9.2012 for the assessment year 2012-13 declaring income at ₹ 10,16,670/-. During the course of assessment proceedings, the assessee was asked to explain certain cash payments amounting to ₹ 24,77,000/- made to M/s Chandigarh Spun Pipe Company, a sister concern of the assessee. The assessee submitted that due to mistake of the Accountant the details filed were erroneously entered and later on the correct details as per the books of account by way of reply along with the affidavit dated 20.2.2015 (Annexure A-4) of the Accountant was filed. The Assessing Officer vide order dated 17.3.2015 (Annexure A-1) framed the assessment at ₹ 34,93,670/- by making addition of ₹ 24,77,000/- on account of disallowance of expenditure under Section 40A(3) of the Act. The assessee vide letter dated 20.12.2014 (Annexure A-5) explained the nature

of the running account with the sister concern to the Assessing Officer. Feeling aggrieved by the assessment order, Annexure A-1, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity “the CIT(A)”]. The CIT(A) vide order dated 14.10.2016 (Annexure A-2) upheld the addition of ₹ 24,77,000/- made under Section 40A(3) of the Act by the Assessing Officer and dismissed the appeal. Still dissatisfied, the assessee filed an appeal before the Tribunal. The Tribunal vide order dated 27.3.2018 (Annexure A-3) affirmed the order passed by the CIT(A) and dismissed the appeal. Hence, the present appeal by the assessee.

4. We have heard learned counsel for the appellant and do not find any merit in the appeal.

5. The primary issue that arises in this appeal relates to whether the addition of ₹ 24,77,000/- made on account of disallowance of expenditure under Section 40A(3) of the Act is justified.

6. During the course of assessment proceedings, the assessee produced copy of account of its customer, namely, M/s Chandigarh Spun Pipes Co. (P) Ltd., wherein instances of cash payments to the said customer exceeding ₹ 20,000/- totalling ₹ 24,77,000/- were made. Thereafter, revised copy of the account qua the said transactions showing all the payments to be below ₹ 20,000/- was submitted by the assessee. The Assessing Officer while rejecting the plea of the assessee made addition of ₹ 24,77,000/- on account of expenditure under Section 40A(3) of the Act.

7. It was, *inter alia*, concluded that the revised statement of account of M/s Chandigarh Spun Pipe Co. was not genuine and had been submitted with the attempt to fall outside the ambit of Section 40A(3) of the Act. The relevant findings recorded by the Assessing officer read thus:-

“When both the copies of accounts in discussion are perused with reference to each other, it is found that only the entries relating to the cash payments made in contravention of section 40A(3) as confronted vide this office letter dated 01.01.2015 and letter dated 13.02.2015 were different and splitted into small amounts upto the limits of ₹ 20,000/- referring them to the different dates. No change in the entries involving particulars of transactions by cheque, transaction by transfer and transaction through bills was made and these stands to be the same in both the copies of accounts. As such the contention of the assessee of presenting the earlier submitted copy of account to be wrongly prepared and the later submitted copy of account of the party M/s Chandigarh Spun Pipe Co. Pvt. Ltd. to be correctly prepared is not correct and not befitting to the legacy of the matter as the entries of cash payments made in contravention of section 40A(3) only been changed/ amended/splitted in to the amount up to ₹ 20,000/- for escaping the liability of making violation of section 40A (3) of the Act. The fact that assessee took time of two months and nine adjournments to change the ledger account of M/s Chandigarh Spun Pipe Co. Ltd. and its effect in the cash book as well comes to be the circumstantial evidence on record of the file to prove that assessee has made an attempt to escape the liability under

which it was put vide this office letter dated 01.01.2015 and 13.02.2015. Had, there been existing any truth in the contentions of the assessee that earlier account was wrongly prepared, response to this effect would have come on the next date of hearing, i.e. 01.01.2015 and nine adjournments might not have been sought for and the period of about almost two months should have not elapsed. Submission of affidavit from Sh. Kanwaljit Singh S/o Late Sh. Surinder Singh dated 20.02.2015 the alleged accountant is also found false to prove in letter and spirit that the entries of cash payments (confronted to the assessee to be in contravention of section 40A(3) of the Act) were wrongly entered. It only contends that earlier account was wrongly typed by taking the figures in summarized form and mentioning the figures in consolidated manner whereas there is no wrong in doing so. The figures are to be taken in summarized way and consolidated manner for the cash payments & transactions of single party in a single day in view of provisions of Section 40A(3) of the Act. Hence the reply of the assessee dated 20.02.2015 on the issue of contravention of provisions of section 40A(3) of the Act in respect of the cash payments made as per copy of account of M/s Chandigarh Spun Pipe Co. Pvt. Ltd. submitted vide reply dated 23.12.2014 as confronted to the assessee number of times vide noting sheet entries

from 23.12.2014 to 16.02.2015 and letter dated 01.01.2015 and dated 13.02.2015 is not accepted and is held to be an attempt to misrepresent the facts by changing the ledger account of M/s Chandigarh Spun Pipe Co. Pvt. Ltd. and giving effect to this tempering in the cash book as well and to submit the changed copy of account of M/s Chandigarh Spun Pipe Co. Pvt. Ltd. on 20.02.2015 only to escape the liability of default of violating the provisions of section 40A(3) of the Act to which the assessee is held liable for making the cash payments to the total of ₹ 24,77,000/- (as per details given in letter dated 01.01.2015 and show cause given vide letter dated 13.02.2015) to M/s Chandigarh Spun Pipe Co. Pvt. Ltd. in contravention of section 40A(3) of the Act and this cash payment of ₹ 24,77,000/- is not allowed to be deducted as expenses while computing the business income and added back to the income of the assessee. Accordingly, addition of ₹ 24,77,000/- is made to the income of the assessee on this issue.”

8. In appeal, the CIT(A) affirmed the said addition by observing that the said addition had been correctly made by the Assessing Officer and it was a case of splitting of entries which had been done to avoid the provisions of Section 40A(3) of the Act. The CIT(A) had elaborately discussed the issue and appreciated the material/evidence while confirming the order of the Assessing Officer which is in following terms:-

“5. On going through the entire set of facts of the case, the arguments put forth by the Assessing Officer and that of the appellant, I am of the opinion that addition has been correctly made by the Assessing Officer. The appellant produced one set of copy of accounts before the Assessing Officer and on being pointed out the defects which could lead to an addition u/s 40A(3) submitted a second set of accounts. The arguments put forth by the Assessing Officer have considerable merits. It would be worthwhile to read through the verbose arguments of the Assessing Officer and hit the crux of the matter and to attempt a summary of Assessing Officer's arguments as below:

(i) When the original and the revised copy of accounts are compared than it is observed that only the daily cash payments above ₹ 20,000/- in the original copy have been split in the revised copy to make sure that daily cash entries come below ₹ 20,000/-. All other entries other than these have not been altered as they do not affect the case of the appellant.

(ii) On page Nos.3 & 14 of the order, the Assessing Officer has discussed these entries. In the account statements (original and revised), the following entry is written:

	Date		Particulars	Vch Type	Vch No.	Debit	Credit
Original	09.04.2011	Cr	Cash	Payment	9	30,000.00	
Revised	09.04.2011	Cr	Cash	Payment	9	18,500.00	
Revised	11.04.2011	Cr	Cash	Payment	10	11,500.00	

It is seen from the above entry that it is not a simple case of mistake by an accountant. It is not that the accountant has simply consolidated the entries as explained by the appellant. The dates, and the voucher number have been altered. Earlier the amount of ₹ 30,000/- was shown to have been paid on 09.04.2011 vide voucher No.9 in the original account statement. But now the amount is shown to have been paid on two dates i.e. 09.04.2011 and 11.04.2011 vide voucher Nos. 9 and 11. In the next entry in the original statement is as under:-

Date		Particulars	Vch Type	Vch No.	Debit	Credit
12.04.2011	Cr	Cash	Payment	11	20000.00	

But the revised statement, the same entry has become-

Date		Particulars	Vch Type	Vch No.	Debit	Credit
12.04.2011	Cr	Cash	Payment	12	20,000.00	

The voucher number has been changed from 11 to 12.

It would be worthwhile to examine another entry to illustrate the fact that it is not a simple case of consolidation of entries by mistake. It is rather a case of splitting of entries which has been willfully done to

avoid the provisions of section 40A(3) of the Act. The original entry on 27.04.2011 is cash payment of ₹ 2,70,000/- and on 02.05.2011 & 07.05.2011 are cash payments of ₹ 50,000/-. In the revised account statement entry corresponding to 27.04.2011 has been split into 15 entries of denominations smaller than ₹ 20,000/- from 27.04.2011 to 13.05.2011 i.e. over a span of 17 days. But in between these were two more so called “consolidated” entries of ₹ 50,000/- each on 02.05.2011 and 07.05.2011 which have been split and moved to 14.05.2011 to 17.05.2011 and 18.05.2011 respectively. This argument of the appellant that the accountant consolidated these entries cannot be believed. If any prudent man would add up smaller figures to make a consolidated figure of ₹ 2,70,000/- then the next consolidated entry should appear after the last unconsolidated entry which was part of the first consolidated entry.

For example, if unconsolidated entries are in the order ₹ 1, ₹ 2, ₹ 3 and ₹ 4 and they are consolidated into two groups then consolidated entries would appear as ₹ 3 (1+2) ₹ 7 (3+4) in that order. While consolidating the order of entry would not be disturbed. In this case it is not consolidation but splitting. The account statements would clearly illustrate this:

Original Entry						Revised Entry						Cumulative Entry
27.04.2011	Cash	Payment	19	Rs.	2,70,000	12.04.2011	-	Rs.	19,000	1	Rs.	19,000
						28.04.2011	-	Rs.	17,000	2	Rs.	36,000
						29.04.2011	-	Rs.	18,500	3	Rs.	54,500
						30.04.2011	-	Rs.	17,500	4	Rs.	72,000
02.05.2011	Cash	Payment	21	Rs.	50,000	02.05.2011	-	Rs.	16,500	5	Rs.	88,500
						03.05.2011	-	Rs.	19,000	6	Rs.	1,07,500
						04.05.2011	-	Rs.	17,000	7	Rs.	1,24,500
						05.05.2011	-	Rs.	17,500	8	Rs.	1,42,000
						06.05.2011	-	Rs.	18,500	9	Rs.	1,60,500
07.05.2011	Cash	Payment	27	Rs.	50,000	07.05.2011	-	Rs.	18,500	10	Rs.	1,79,500
						09.05.2011	-	Rs.	16,500	11	Rs.	1,95,500
						10.05.2011	-	Rs.	19,500	12	Rs.	2,15,000
						11.05.2011	-	Rs.	16,500	13	Rs.	2,31,500
						12.05.2011	-	Rs.	19,500	14	Rs.	2,51,000
						13.05.2011	-	Rs.	19,000	15	Rs.	2,70,000
						14.05.2011	-	Rs.	14,500	16	Rs.	14,500
						16.05.2011		Rs.	19,500	17	Rs.	34,000
						17.05.2011		Rs.	16,000	18	Rs.	50,000
						18.05.2011	-	Rs.	18,000	19	Rs.	18,000
						19.05.2011	-	Rs.	17,000	20	Rs.	35,000
						20.05.2011	-	Rs.	15,000	21	Rs.	50,000

The entry of ₹ 2,70,000/- had to be split into 15 entries
all below ₹ 20,000/- spread over a period of 15 days and

last entry is on 13.05.2011 as a result the amounts which added upto 50,000/- moved to 14.05.2011 and 18.05.2011 from their earlier date of 02.05.2011 and 07.05.2011. It is also not normal for an accountant consolidate entries to make an odd figure of ₹ 2,70,000/-. This conclusion is highly improbable and does not appeal to a logical mind. It is easier to pay cash of ₹ 2,70,000/- on one day then to pay denominations varying from ₹ 16,500/- to ₹ 19,500/- on 15 consecutive days to the same party.

(iii) The Assessing Officer on page 32 of the order has made an observation that voucher numbers were not mentioned on the vouchers, while they were there in the account copies. The appellant has claimed that the Tally Account Software itself generates the voucher numbers. This part of the plea of the appellant is correct. In Tally the primary document is the voucher in which voucher number is auto generated and once the voucher is filled, the ledger accounts gets automatically updated. It is not the other way round. In the case of the appellant, manual vouchers have been made and then ledger account has been generated, which is not a normal procedure of maintaining account in Tally software. The website of Tally Solutions, www.tallysolutions.com/products/tallyerpa/functions – features – accounting (accessed on 12.09.2016), makes the following description of their

produce on its home page,

“with the entry of a voucher all books of accounts, all reports, all totals and sub totals are updated instantly. There is nothing more that needs to be done – whether you are inserting a forgotten entry or correcting one.”

(iv) The Assessing Officer rejected the affidavit of the accountant on pages 33-35 of the assessment order. The accountant had asserted that original copy of account submitted before the Assessing Officer were consolidated figures instead of actual book entries. But discussion above clearly shows that it was not a mere consolidation of entries but there is change in voucher numbers & dates. The Assessing Officer has argued that the affidavit is an after thought.

(v) The delay in making reply after confronting the issue to the appellant's counsel. The Assessing Officer on pages 30 & 31 has drawn a table bringing out the number of opportunities given to the appellant and drawn a conclusion that the appellant took two months, and took 9 dates and various adjournments to arrive at a revised copy of account. If the revised entries were available to the appellant it could have been produced on the very first or at best second hearing.

5.1. The appellant arguments do not carry weight in view of the detailed discussion of facts brought about by the Assessing Officer. The plea of the appellant is

rejected and addition made on this account by the Assessing Officer is therefore upheld. Ground of appeal taken by the appellant is dismissed.”

9. The Tribunal while affirming the aforesaid findings had recorded that in the facts and circumstances of the case, the submissions of the assessee cannot be accepted as no attempt had been made to demolish the conclusions drawn on facts. The plea of the assessee that there was mistake by an Accountant remained unsubstantiated and was not supported even in the explanation furnished by the assessee.

10. We refer to the decisions relied upon by the appellant. Learned counsel for the appellant cited decision of the Rajasthan High Court in **Commissioner of Income Tax v. Moti Lal Khatri 7 DTR (RAJ) 139** and under question No.3, reference has been made to decision of this Court in **CIT v. Nikko Auto Ltd. 256 ITR 476**. Suffice it to notice that the principles of law enunciated therein, are well recognized, however, being based on individual fact situation involved therein and in view of concurrent findings of fact recorded by the Assessing Officer, the CIT(A) and the Tribunal, they do not advance the case of the assessee.

11. An effort was made by learned counsel for the appellant to demonstrate that the conclusions and the concurrent finding of facts recorded by the Assessing Officer, the CIT(A) and the Tribunal was erroneous and perverse by referring to the copy of evidence produced before us, but the appeal under Section 260A of the Act lies only on a substantial question of law. The appreciation of evidence to arrive at different conclusion on the same evidence does not fall within the ambit of substantial question under Section 260A of the Act. The aforesaid findings

of fact recorded by the Assessing Officer, the CIT(A) and the Tribunal, thus, cannot be held to be perverse based on non-appreciation of material on record or based on misreading of any evidence on record which may warrant interference by this Court. No question of law, much less, substantial question of law arise in the appeal.

12. Accordingly, finding no merit in the present appeal, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

February 25, 2019
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes

सत्यमेव जयते