आयकर अपीलीय अधिकरण, कटक न्यायपीठ,कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

श्री सी.एम.गर्ग, न्यायिक सदस्य **एवं** श्री एल.पी.साहु,लेखा सदस्य के समक्ष

BEFORE SHRI C.M. GARG, JM & SHRI L.P. SAHU, AM

आयकर अपील सं./ITA No.53/CTK/2018

(**निर्धारण वर्ष /** Assessment Year : 2012 - 2013)

Mr. Rajendra Kumar Sahoo, Prop. of New Kanak Jewellery & Kanak Transport, At/Po: New Market, Keonjhar-758001	Vs.	ACIT, Circle-1(1), Cuttack
स्थायी लेखा सं./PAN No. : **ARKPS 2114 G**		

(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

निर्धारिती **की ओर से** /Assessee by	:	Shri B.R.Panda/Satyajit Nanda, Advs.
राजस्व **की ओर से** /Revenue by	:	Shri Subhendu Dutta, DR

सुनवाई की तारीख / **Date of Hearing**	:	22/01/2020
घोषणा की तारीख/**Date of Pronouncement**	:	16/03/2020

आदेश / O R D E R

Per L.P.Sahu, AM :

This is an appeal filed by the assessee against order of CIT(A), Cuttack, dated 18.10.2017 for the assessment year 2012-2013.

2. As per the office note/order sheet entry, the appeal of the assessee is barred by 48 days. In this regard, the ld. AR of the assessee has filed an application for condonation of delay along with an affidavit. Considering the application along with the affidavit of the assessee for condonation of delay, to which ld. DR did not object to the same, we condone the delay in filing the appeal and the appeal is heard finally.

3. The assessee has raised following grounds of appeal :-

I. For that the addition of Rs.21,46,046/- for alleged violation Sec.40A(3) of the IT. Act, without considering the exceptional or unavoidable circumstances involved for purchasing the gold and silver and when the genuineness of the payments and the identity of the payee had not been doubted then such payments cannot be disallowed in mechanical manner, hence entire addition should be deleted.

II. For that the nature of the gold business and the necessity for expeditious settlement thereof should have been looked into and the evidence also furnished to the satisfaction of the Revenue as the genuineness of the payment and the identity of the payee, it can not be said that the payments violating the provision of Sec.40A(3) of the IT. Act. Hence the addition made ought to have been quashed.

III. For that, both the payer and the payee are known and the transactions are genuine even the payment exceed to the statutory limit that should not be treated as violating the Sec.40A(3) of the I.T. Act, hence the addition of Rs.21,46,046/- should have been deleted.

IV. For that, in this case since the transaction is relating to purchases and not for the expenditure and the persons are identified, then the payment should not be considered as the expenditure incurred for recurring. Hence the addition sustained U/s.40A(3) of the I.T. Act by the Id. CIT(Appeals) is bad in law.

V. For that, the very concept of Sec.40A(3) and Rule 6DD(j) have been incorporated in the Act in order to check the incurring of bogus and fictitious expenses to non-existing parties. But where the genuineness of the payment has not been doubted such addition U/s.40A(3) of the IT Act can not be made in mechanical manner. Thus the orders of the forum below are erred in law.

VI. For that the disallowance/addition of expenses applying the percentage rate by the Id. Assessing Officer and thereafter the Id.CIT(A) reduced the percentage rate from 25% and 10% to 10% and 5% respectively and sustain the addition of Rs.8,22,175/- under the heads Travelling expenses and Business promotion expenses and Rs.2,47,507/- under the heads repair and maintenance, printing and stationary etc. alleging failed to produce the documents and the proposition taken for arriving such method of computation is totally prejudice to the facts of the case.

VII. For that since expenses are made extensively for business purposes to facilitating and functioning of the business in good and positive manner to achieve the business objects and were recorded in the *books of accounts on day to day basis, the percentage rate cannot be applied in this case. Hence the additions made on presumption basis are illegal and liable to be deleted.*

The other grounds will be urged at the time of hearing.

4. Brief facts of the case are that the assessee filed return of income on 02.03.2013 declaring total income of Rs.37,75,199/-. The assessee derives income from retail sale of gold & silver and transport contract. The case was selected for scrutiny and statutory notices were issued to the assessee. Due to change of incumbency the case was transferred to other AO. On perusal of the profit and loss account and ledger furnished by the assessee, it was noticed by the AO that the assessee has purchased ornaments from various dealers, among these dealers he has made purchase from M/s Lily Alankar, Cuttack and M/s Maa Santhosi Jewellers, Cuttack. On verification of ledger of purchases made from these two jewellers, the AO found that the assessee has made purchase by cash exceeding Rs.20,000/- on various dates in one bill in violation of section 40A(3) of the Act. Therefore, the AO invoked the provisions of Section 40A(3) of the Act against the cash payments made by the assessee. For proper understanding, the details of cash payments as incorporated by the AO in the assessment order, are as under :-

S.No	*Date*	*Mode of Payment*	*Amount*	*S.No*	*Date*	*Mode of Payment*	*Amount*
1	*1.4.2011*	*Cash*	*Rs.23,955*	*13*	*18.7.2011*	*Cash*	*Rs.21,685*
2	*5.4.2011*	*-do-*	*Rs.24,644*	*14*	*2.8.2011*	*-do-*	*Rs.23,190*

3	9.4.2011	-do-	Rs.26,788	15	16.8.2011	-do-	Rs.30,542
4	19.4.2011	-do-	Rs.25,897	16	22.8.2011	-do-	Rs.27,714
5	2.5.2011	-do-	Rs.21,761	17	7.9.2011	-do-	Rs.23,409
6	7.5.2011	-do-	Rs.21,665	18	17.10.2011	-do-	Rs.24,725
7	23.5.2011	-do-	Rs.23,735	19	24.10.2011	-do-	Rs.22,304
8	1.6.2011	-do-	Rs.22,691	20	29.10.2011	-do-	Rs.22,666
9	4.6.2011	-do-	Rs.21,409	21	3.11.2011	-do-	Rs.43,178
10	14.6.2011	-do-	Rs.22,786	22	5.12.2011	-do-	Rs.23,230
11	20.6.2011	-do-	Rs.22,167	23	13.12.2011	-do-	Rs.21,680
12	12.7.2011	-do-	Rs.24,813	**Total: Rs. 5,66,634/-**			

Purchase: M/s Maa Santhosi Jewellers, Cuttack.

S.No	Date	Mode of payment	Amount	S.No	Date	Mode of Payment	Amount
1	3.4.2011	Cash	Rs.24,570	17	10.9.2011	Cash	Rs.25,805
2	10.4.2011	-do-	Rs.25,482	18	15.9.2011	-do-	Rs.25,209
3	16.4.2011	-do-	Rs.27,869	19	20.9.2011	-do-	Rs.37,725
4	3.5.2011	-do-	Rs.20,412	20	26.9.2011	-do-	Rs.41,492
5	9.5.2011	-do-	Rs.21,331	21	30.9.2011	-do-	Rs.40,389
6	18.5.2011	-do-	Rs.22,192	22	29.10.2011	-do-	Rs.33,596
7	2.6.2011	-do-	Rs.20,846	23	30.10.2011	-do-	Rs.65,318
8	9.6.2011	-do-	Rs.24,002	24	31.10.2011	-do-	Rs.98,809
9	21.6.2011	-do-	Rs.20,705	25	15.11.2011	-do-	Rs.21,548
10	20.7.2011	-do-	Rs.22,369	26	20.11.2011	-do-	Rs.25,189
11	24.7.2011	-do-	Rs.32,137	27	26.11.2011	-do-	Rs.36,085
12	26.7.2011	-do-	Rs.24,240	28	30.11.2011	-do-	Rs.37,723
13	31.7.2011	-do-	Rs.33,986	29	13.12.2011	-do-	Rs.24,179
14	12.8.2011	-do-	Rs.24,371	30	21.12.2011	-do-	Rs.31,120
15	19.8.2011	-do-	Rs.24,497	31	27.12.2011	-do-	Rs.73,284
16	26.8.2011	-do-	Rs.27,145		**Total: Rs.10,13,625/-**		

Purchase Register:

S.No	Date	Mode of Payment	Amount	S.No	Date	Mode of Payment	Amount
1	13.04.2011	Cash	Rs.27,000	10	27.09.2011	Cash	Rs.35,620
2	18.06.2011	-do-	Rs.35,525	11	01.10.2011	-do-	Rs.22,176
3	14.08.2011	-do-	Rs.64,000	12	12.10.2011	-do-	Rs.22,688
4	20.08.2011	-do-	Rs.54,210	13	07.02.2012	-do-	Rs.45,336
5	24.08.2011	-do-	Rs.27,030	14	11.02.2012	-do-	Rs.30,618

6	*25.08.2011*	*-do-*	*Rs.20,655*	*15*	*16.02.2012*	*-do-*	*Rs.44,469*
7	*04.09.2011*	*-do-*	*Rs.36,947*	*16*	*18.02.2012*	*-do-*	*Rs.25,840*
8	*16.09.2011*	*-do-*	*Rs.23,543*	*17*	*19.02.2012*	*-do-*	*Rs.27,702*
9	*18.09.2011*	*-do-*	*Rs.22,428*	*18*	***Total : Rs.5,65,787/-***		

5. Further, the assessee was asked to explain as to why the cash payments made more than Rs.20,000/- should not be added to the total income of the assessee. In this regard, the assessee submitted his written submissions as under :-

> *"Those bills are paid to M/s Lily Alankar, CTC and M/s Maa Santoshi Works who act as agent to the petitioner who procures gold and silver for the petitioner from the market , so in this case section 40A$3) will not be applicable as per rule 6DD(k) and cited the case law of Sri Shanmuga Ginning Factory (2013)218, Taxman 76"*

The AO observed that the case law relied on the by the assessee is not applicable in the present case in hand because in this case the factory has engaged agent for the purchase of cotton where all the agents have charged 1% commission from the assessee which means that such persons were acting on behalf of the assessee in the process of cotton. This is not same in the present case as the assessee was not charged any commission by the agents and without any commission payment assessee cannot claim that they acted as agent and distinguished the case law relied on by the assessee. Accordingly, the AO made addition of Rs.21,.46,046/-.

6. Further, on scrutiny of accounts, the AO noted that the assessee has debited an amount of Rs.42,65,200/- and Rs.39,56,550/- towards business promotion expenses and travelling expenses, respectively. In

this regard, the assessee was asked to produce the details of such expenses and evidence to substantiate the claim of expenses. In response to this, the assessee produced ledger for these expenses and some handmade vouchers in support of the claim. The AO further noticed that the assessee claiming same expenditure in both the heads i.e. business promotion expenses and travelling expenses and for better understanding the chart incorporated by the AO in the assessment order is reproduced as under :-

Travelling Expenses:

Date	*Particulars*	*Mode of payment*	*Amount*
28.4.2011	*Amount paid for hiring 4 bolero*	*Cash*	*Rs.35,800/-*
29.4.2011	*-do-*	*-do-*	*Rs.36,800/-*
5.5.3011	*-do-*	*-do-*	*Rs.35,000/-*
9.5.2011	*-do-*	*-do-*	*Rs.35,600/-*
30.6.2011	*-do-*	*-do-*	*Rs.36,500/-*

Business Promotion Expenses:

Date	*Particulars*	*Mode of payment*	*Amount*
28.4.2011	*Amount paid for hiring 4 bolero*	*Cash*	*Rs.45,835/-*
29.4.2011	*Amount paid for hiring 1 bolero*	*-do-*	*Rs.9,000/-*
5.5.3011	*-do-*	*-do-*	*Rs.9,000/-*
9.5.2011	*-do-*	*-do-*	*Rs.9,000/-*
30.6.2011	*-do-*	*-do-*	*Rs.9,000/-*

The AO further noticed that under the business promotion the assessee has made payments for purchase of blankets for truck drivers to promote the transporting business and the payments have been made through cash. The assessee was confronted and then the assessee produced self-made vouchers and claimed purchases were made from different places which is not fully verifiable. The AO noticed that the nature of the business is not changed from the earlier years and the assessee has also not claimed these expenses in the previous year. Accordingly, the AO disallowed 25% of the total expenses claimed i.e. Rs.20,55,438/- and added to the total income of the assessee.

7. Further on scrutiny of profit and loss account, the AO found that the assessee has claimed expenses under the different heads which reads as under :-

Heads of Expenses	**Amount**
Repair & Maintenance	Rs. 4,93,325/-
Printing & Stationary	Rs. 2,49,231/-
Fuel & Lubricant	Rs. 14,70,500/-
Telephone Charges	Rs. 2,62,010/-
	Rs. 24,75,066/-

In regard to the above expenses debited into the profit and loss account, the assessee was asked to produce the details of such expenses and substantiated the claim of expenditure. In support of this, the assessee furnished the ledger copies of some expenses booked under the above heads and could not produce all the bills and vouchers for verification. The assessee submitted that all these expenses were incurred dully for the purpose of business, therefore, the AO in absence the details, like bills and vouchers and most of the expenses were paid in cash, concluded that the leakage of revenue cannot be denied in such circumstances, therefore, he disallowed lumpsum 10%

of the above expenses and added to the total income of the assessee at Rs.2,47,507/-.

8. Feeling aggrieved from the order of AO, the assessee appealed before the CIT(A) and the CIT(A) after considering the submissions of the assessee, upheld the disallowance made by the AO u/s.40A(3) of the Act and in respect of adhoc addition, the CIT(A) reduced to 10% of the above addition in case of business promotion expenses and travelling expenses, and in case of disallowance of Rs.2,47,507/- the AO restricted to 5% of the total addition made by the AO i.e. Rs.1,23,753/-. Accordingly, the CIT(A) partly allowed the appeal of the assessee.

9. Aggrieved from the above order of CIT(A), the assessee is in further appeal before the Income Tax Appellate Tribunal.

10. Ld. AR before us reiterated the submissions made before the lower authorities and filed written submissions as under :-

> *1. That the assessee filed his I.T. Return disclosing total income at Rs.37,75,199/- derives from retail sale of gold and Silver Ornaments and the Transporting Contract works. The return was processed U/s. 143(1) of the I.T. Act and thereafter it was taken up for scrutiny under compulsory scrutiny and the appellant appeared in the assessment proceedings and produced the books of account and other information as was called for time to time.*
>
> *2. That, the Id. Assessing Officer passed the Assessment order U/s. 143(3) of the IT Act and inflated the income to Rs.82,24,190/- by way of additions/ disallowance made as under:-*
>
> *(i) Additions made at Rs.21,46,046/- U/s.40A(3) of the I.T. Act on account of Cash Payment for purchase of gold ornaments.*

(ii) Disallowance of Rs.20,55,438/- i.e. 25% of Rs.82,21,750/- towards the expenses claimed under head Travelling & Business promotion expenses.

(iii) Disallowance of Rs.2,47,507/- i.e. 10% of Rs. 24,75,066/- towards the expenses claimed under heads Repair and maintenance, Printing & Stationary, Fuel & Lubricants, etc. Thus the assessed income determined at Rs.82,24,190/- as against the returned income shown at Rs.37,75,190/-.

3. *That the addition made at Rs.21,55,438/- U/s.40A(3) of the IT. Act for violation of provision towards purchase of gold ornaments and old gold in cash payment. It was submitted that generally in gold business market price stability are not always in constant rate. So it has waited to procure * the gold from market to get good profit in such stiff market competition. Further the assessee who is staying far away from the supplier establishment, it was not preferable for payment in cheques or drafts due to fluctuation of price rate. Further non-availability of specified design of ornaments in the markets, the seller demanded for cash payment instead of demand draft or cheques, and the assessee for protection of business so also non-available of specific items agreed for cash transactions in compulsion. Therefore considering the exigency of business and genuineness of payment and identity of both payer and payees, the addition made for violation of Sec.40A(3) of the IT. Act should not have been applied and in the case of Attar Singh Gurmukh Singh v. Income Tax Officer (1991) 191 ITR 667, the Supreme Court considering sub-rule (j) of rule 6DD observed that where the assessee furnishes evidence to the satisfaction of the assessing officer as to the genuineness of the payments and the identity of the payee, such payments cannot be disallowed.*

4. *That so far the disallowance of Rs.20,55,438/- i.e. 25% of Rs.82,21,750/- claimed towards the expenses under heads of travelling and business promotion expenses, and Rs.2,47,507/- i.e. 10% of Rs.24,75,066/- claimed the expenses under the different heads such as Repair and Maintenance, printings and stationary, etc. and thereafter it has reduced to 10% and 5% by the 1st Appellate Authority and reworked the addition of Rs.8,22,175/- and Rs.2,47,507/- alleging non-production documentary evidence in support of such claims hold very much confusion and the proposition taken for arriving such computation is totally inconvenience and citing the facts also have no basis for disallowance of expenses. Hence the additions made are required to be deleted entirely.*

5. *That the assessee despite of explaining the facts vis-a-vis the documents/information filed, the Id. CIT(A) although considering the matter reduced the percentage rate applied for disallowance of the expenses, but not agreed fully with the explanation filed by the appellant.*

Further in support of his arguments, ld. AR relied on the decision of the SMC Bench of this Tribunal in the case of M/s Laxmi Narayan Jewellery in ITA No.250/CTK/2018, order dated 13.05.2019. He also submitted that the payments to whom have been made are genuine persons, therefore, the AO should not disallow the payments made by cash exceeding Rs.20,000/-. The parties are genuine and the purchase have also not been doubted by the AO. In support of this, he also relied on the judgment relied on by the counsel of the assessee in the case of decision of the SMC bench of the Tribunal as cited supra.

10. Further in respect of adhoc disallowance, ld. AR submitted that the authorities below were not justified to make lumpsum disallowance without pointing out any specific bills and vouchers which are not genuine. All the books of accounts were produced by the assessee and the books of accounts have also been audited by the Chartered Accountant which has not been formed any mistake in this regard. Therefore, the order of the CIT(A) deserves to be dismissed.

11. On the other hand, ld. DR relied on the order of CIT(A) and in respect of ground No.1, submitted that the AO has discussed the issue in details and the assessee could not substantiate that there was any business exigency and he was also unable to substantiate that under which rule of Rule 6DD of I.T.Rules, 1962, the assessee was compelled to make payment in cash. Both the creditors are belonged to Cuttack

where there are ample banking facilities available. The CIT(A) has also discussed the issue in very judicial manner. The case laws relied on by the ld. AR of the assessee are not applicable in the present case in hand. Ld.AR of the assessee also unable to substantiate that these payments have been incorporated in the ledger account of the creditors and has paid due taxes thereon. Further in respect of ground Nos.2&3, ld. DR relied on the order of CIT(A) and submitted that the assessee could not produce external vouchers and some of the entries were supported in the books of accounts of the assessee by way of internal vouchers, which cannot be relied on fully that genuine expenses have been incurred by the assessee for smooth running of the business. Therefore, the CIT(A) has rightly restricted the addition made by the AO.

12. After hearing both the sides and perusing the entire material available on record and the orders of authorities below, in respect of ground No.1, the AR of the assessee has tried to justify that he may get the benefit of rule 6DD of Income Tax Rules, 1962, but he was unable to justify before us that under which clause of rule 6DD of I.T.Rules, the assessee wanted to get benefits. The cash payments have been made towards purchase of gold ornaments, parties are belonged to Cuttack where banking facilities are available. Further on perusal of the details of payments made as narrated above, as per chart, it is clear that the assessee has made payment in cash in different dates. We also observe

from the order of the AO as well as submissions made before the CIT(A), he has taken different view before the AO and submitted that the assessee has purchased goods with the help of commission agent but he has not debited any commission in his profit and loss account as observed by the AO in his order. Therefore, in these circumstances, the case law relied on by the ld. AR is not applicable in the present case and he has also relied on the decision of SMC Bench of the Tribunal as cited supra in ITA No.250/CTK/2018, order dated 13.05.2019, wherein it is held as under :-

> *"9. I have heard the rival submissions, perused the materials available on the record of the Tribunal and orders of lower authorities. From the chart as reproduced above, it is clear that the payments were made to parties i.e. Epari Sadashiv Pvt Ltd., and M/s. Alankar Jewellery, Balasore. The assessee is in business of jewellery. It is not disputed that if an assessee incurs any expenditure in respect of which*
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> *payment in excess of Rs.20,000/- is made in a day to a single person, other than by an account payee cheque or an account payee bank draft, 100% of such expenditure will not be allowed as deduction and in such a situation provisions of section 40A(3) will be applicable. I find that assessee's claim is not covered by any of the exceptions provided under Rule 6DD. However, the first proviso below Section 40A(3) clearly takes into consideration the nature of expenses, banking facilities, consideration of business expediency and other relevant factors. Rule 6DD in intent and purpose takes into consideration all these aspects for prescribing various exceptional circumstances. Therefore, Rule 6DD cannot be mechanically applied and I have to consider the overall explanation of the assessee having regard to the business consideration. The assessee's explanation is that assessee had to make payment in business exigency as during the month of February, 2012, generally marriages takes place and during odd hours, the assessee made transactions and in some cases seller was insisting for cash payments. The payments had been made to the seller because of that reason. The genuineness of purchases had not been doubted by the Assessing Officer. I find that in this case, there is no dispute to the fact that the genuineness of the transaction and the payment and identity of the receiver are established. This view is supported by the decision of Hon'ble P&H High Court in the case of Gurdas Garg (supra) and also the decision of Hon'ble Supreme Court in the case of Attar Singh Gurmukh*

> *Singh (supra). Under such circumstances, I am of the opinion that the disallowance of these expenses by applying to section 40A(3) would not be justified. I, accordingly, set aside the order of ld CIT(A) on this count and allow the grounds of appeal of the assessee.*
> *In the result, appeal of the assessee is allowed."*

From the above observations of the Tribunal, it is clear that the decision cited by the ld. AR is a decision rendered by the SMC Bench of this Tribunal, which is not bound to follow by the Division Bench. Further we notice that in the above case the assessee has proved that there was business exigency which is clear from the above findings recorded by the Tribunal. But in the present case in hand, the assessee has made payment from April, 2011 to September, 2011 on different dates. Further the case laws relied on by the ld. AR of the assessee is also not applicable in the present case in hand because merely accepting the purchase by the AO, it was duty of the assessee to prove as to whether particular payees have incorporated in their books for computing their profits on the respective sales or not and we also noted from the submission of the assessee that there are contradictory submissions before the authorities below. Considering to the totality of facts and circumstances of the case, the CIT(A) has rightly dismissed the appeal of the assessee.

13. In respect to ground Nos.2&3, on perusal of the orders of authorities below, it is clear that the assessee has inserted some entries in books of accounts with the support of some internal vouchers and

complete bills and vouchers were not produced by the assessee before the revenue authorities. Therefore, we are in agreement with the findings recorded by the CIT(A). In view of this, the grounds raised by the assessee in respect of adhoc additions i.e. ground No.2 & 3 are dismissed.

14. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 16/03/2020.

Sd/-	**Sd/-**
(C.M.GARG)	**(L.P.SAHU)**
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

कटक Cuttack; दिनांक Dated 16/03/2020

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
   Mr. Rajendra Kumar Sahoo,
   Prop. of New Kanak Jewellery &
   Kanak Transport,
   At/Po: New Market,
   Keonjhar-758001
2. प्रत्यर्थी / The Respondent-
   ACIT, Circle-1(1), Cuttack
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कटक** / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(**Senior Private Secretary**)
आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack