

IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH: AGRA
BEFORE SHRI A. D. JAIN, JUDICIAL MEMBER, AND
DR. MITHA LAL MEENA, ACCOUNTANT MEMBER

I.T.A No. 90/Agra/2017
(ASSESSMENT YEAR:2010-11)

Smt. Neeta Sharma, Prop. M/s Sharma International, 5-Lata Kunj, Mathura Road, Agra. PAN: ABUPS3306C (Appellant)	Vs.	DCIT, Circle-1(1)(1), Agra. (Respondent)
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Appellant by	Shri Navin Gargh, AR.
Respondent by	Shri Waseem Arshad, Sr. DR.

Date of Hearing	05.06.2018
Date of Pronouncement	30.08.2018

ORDER

PER, A. D. JAIN, JUDICIAL MEMBER:

This is an assessee's appeal for A.Y. 2010-11, taking the following grounds:

“1. Because in any view, the addition confirmed by ld. CIT(A) of Rs.3,13,078/- of disallowance u/s 40A(3) in the peculiar facts and circumstances of the case is arbitrary, perverse, wrong, illegal, and against the facts and law of the case.

2. *Because in any view, the addition confirmed by ld. CIT(A) of Rs.8,52,002/- out of total addition u/s 40(a)(ia) of Rs. 13,13,796/- by applying provisions of Section 40A(3) is arbitrary, unjust, wrong, illegal, and against the facts and law of the case.*

3. *Because in any view, the ld. CIT (A) has erred in confirming the interest charged u/s 234B and 234C which is wrong, and illegal.”*

2. Apropos Ground No.1, the AO, while making addition of Rs.3,13,078/-, by making disallowance u/s 40A(3) of the IT Act, held as follows:

“2. During the course of assessment proceedings on perusal of cash book it is found that assessee has paid/incurred expenses more than Rs.20,000/- in a single day. Vide order sheet entry dated 05.11.2012 assessee was required to explain why the following expenses which is paid in cash may not be disallowed u/s 40A(3) :-

	<i>Name</i>	<i>Date</i>	<i>Amount</i>
(i)	<i>Sh. Dalchand</i>	<i>12.05.2009</i>	<i>20,600/-</i>
		<i>15.05.2009</i>	<i>23,000/-</i>
(ii)	<i>Sh. Bachanu</i>	<i>14.05.2009</i>	<i>30,000/-</i>
(iii)	<i>Sh. Mayaram</i>	<i>14.05.2009</i>	<i>21,500/-</i>
(iv)	<i>Sh. Vijay Kumar</i>	<i>11.06.2009</i>	<i>25,000/-</i>
		<i>04.07.2009</i>	<i>30,000/-</i>

(v)	<i>Sh. Vasudev</i>	11.07.2009	60,000/-
(vi)	<i>Sh. Ravindra Kumar</i>	11.07.2009	71,978/-
		16.07.2009	<u>30,000/-</u>
			<u>3,13,078/-</u>

2.1 *Vide letter dated 14.12.2012 assessee stated as under:-*

1.1 That so called cash payment exceeding Rs.20,000/- for nine payment amounting to Rs.3,13,078/- w.r.t. disallowance u/s 40A(3) of Income Tax Act. It is submitted that each payment is actually Rs,20,000/- or less, and have been taken as cumulative payment noted the order sheet.

1.2 That in support that each payment is 20,000/- or less, the copy of the original payment vouchers as available on 05.11.2012 are enclosed herewith alongwith the statement viz-a-viz for all nine payments amounting to Rs3,13,078/-.

1.3 That the confirmations of the respective parties in support of above payment have been made, are further enclosed herewith.

1.4 That inadvertently by mistake of the data feeder, the cumulative amount has been feeded in the cash book in a casual manner, as the vouchers were cumulatively kept together.

1.5 That there is no contravention u/s 40A(3) as the payments made are of Rs.20,000/- or less."

2.2 *The reply of the assessee is considered. The contention of the assessee is not accepted because as per income tax provision assessee has incurred Rs.20,000/- in a single day. The assessee has produced photocopy of self made vouchers and self made confirmation from parties whom paid above amount. But this is not verifiable due to assessee has not furnished any supporting evidence in his claim. He has also not given complete postal address of persons; therefore, verification is not possible. In his ledger/cash book which has been produced before undersigned, it is clearly mentioned that above payment has been made in a single day to a single person. So, reply of the assessee is not acceptable and, therefore. Rs.3,13,078/- is being disallowed and added to the total income of the assessee.*

3. While confirming the addition, the Id. CIT(A) has held as under:

“6.3 I have carefully considered the appellant's submission, the facts of the case and the legal position in this regard. I find that the undisputed fact in this case is that 9 payments exceeding the statutory limit of Rs. 20,000/- in a day, have been recorded in the appellant's Cash Book. The appellant's cash book is audited and forms one of the primary documents of her books of accounts. The explanation given by the appellant to the A.O. and to me is that it was due to inadvertent error of the data feeder that the cumulative amounts were

recorded in the cash book. This explanation is not in my opinion, believable because it is unlikely that the same error is repeated by the data feeder in case of as many as nine payments made to six persons. I also find that the appellant has filed cash payment vouchers and confirmations from the six payees in support of her argument that no payment was above Rs. 20,000/-. A perusal of these documents reveal that all cash vouchers are for payments below Rs. 20,000/-. However, it is still not understandable why the audited cash book entries be disbelieved and the vouchers and some confirmation letters signed by persons whose address is incomplete, be believed? The total payment in the case of all the six payees is not large enough for them to come more than once to the appellant's cashier and collect the payments in meticulously arranged installments of less than Rs. 20,000/- per day. For example, Sri Vasudev, as per his confirmation, collected his payment of Rs.61,786/- in four installments on 03.07.2009, 04.07.2009, 06.07.2009 and 07.07.2009. In consideration of the above facts I am of the view that the A.O. has rightly made the impugned disallowance under section 40A(3) of the Act. Grounds no. 1.1 and 1.2 are dismissed accordingly and addition of

Rs. 3,13,078/- is confirmed.”

4. The Id. Counsel for the assessee has contended that the Id. CIT(A) has erred in confirming the addition of Rs.3,13,078/-.

5. The Id. DR has placed strong reliance on the impugned order. It has been contended that neither the identity of the payee, nor the genuineness of the transaction has been established by the assessee; and that the transactions are running transactions.

6. Heard. It is undisputed that in her cash book, nine payments of more than Rs.20,000/- each in a day are recorded. The cash book audited. The assessee's stand is that in the cash book, cumulative amount was fed, in an inadvertent casual manner, since the vouchers were cumulatively kept together. Copies of original payment vouchers, as available on 05.11.2012 were filed, alongwith statement, for all nine payments amounting to Rs.3,13,078/-, to show that each payment was of Rs.20,000/- or less. Confirmations from the six payees were also filed. The Id. CIT(A) has observed that from these vouchers and confirmations, no payment is seen to be above Rs.20,000/-. However, the vouchers and confirmations letters were disbelieved in the face of the entries in the cash book, since the addresses of

the payees, as furnished by the assessee, were incomplete and, so, the veracity of the assessee's companies was not confirmable.

7. The CIT(A)'s conclusion is correct. In the written submission dated 02.03.2016 filed by the assessee before the Id. CIT(A), which written submission have been reproduced in para 6.2 of the impugned order, the assessee stated that the AO had made the addition without verifying the evidences furnished. Complete addresses of the payees, though, were not provided before the AO. They were also not furnished before the Id. CIT(A), nor have they been filed before us. Therefore, the impugned order in this regard is upheld. Ground No.1 is rejected.

8. Coming to Ground No.2, the AO made disallowance of Rs.13,13,796/- u/s 40(a)(ia) of the Act, in respect of freight and cartage (inward) paid in cash exceeding Rs.20,000/- on a single day to various persons, for non-TDS u/s 194C of the IT Act. The CIT(A) held that in view of the amendment to section 40A(3) w.e.f. 01.10.2009, by unserved of the second proviso after section 40A(3A), the limit of Rs.20,000/- stood increased to Rs.35,000/-. Accordingly, she confirmed the disallowance of Rs.13,13,796/- to the extent of Rs.8,52,002/- u/s 40A(3). The assessee is in appeal against this, whereas the CIT(A)'s action of holding as not sustainable, the addition made u/s 40(a)(ia) has not been challenged.

9. The ld. CIT(A) has rejected the assessee's claim of her case being covered by Rule 6DD (k) of the IT Rules, 1962, observing that there-under, no disallowance is called for, where the payment is made by a person to his agent whereas in this case, the assessee made payment to truck drivers, who are not the assessee's agents.

10. The assessee has argued that section 40A(3) has not been properly applied. She refers to the first proviso to section 40A(3A). She further relies on 'Shri Tejveer Singh vs. ITO', order dated 03.06.2016, passed by the Agra ITAT, in ITA 329/Agra/2015, for A.Y. 2008-09 and on 'R.C. Goel vs. CIT', order dated [relied on before the ld. CIT(A) also] dated 04.12.2012, passed by the Hon'ble Delhi High Court in ITA 636/2012.

11. The ld. DR has placed strong reliance on the impugned order.

12. Heard. The ld. CIT(A) has confirmed the disallowance holding that the case of the assessee is not covered under Rule 6DD (k) of the Rules, since the payments were made by the assessee, admittedly not to her own agents, but the truck drivers who delivered the goods to the assessee, as agents of the transporters/payee.

13. Rule 6DD (k) provides that no disallowance u/s 40A(3) of the Act can be made 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 the such person. It is the self-avowed case of the assessee that the truck drivers, to whom she made the cash payments in question, are not her agents, rather they are the agents of the transporter of the goods to the assessee. It is the transporter who is the payee. As such, no benefit of allowance under the Rule is available to the assessee, as correctly held by the Id. CIT(A).

14. The question is whether, as contended, the allowances can be made de hors the fact that no allowances is available under Rule 6DD (k) of the Rules.

15. In this regard, in 'M/s Dhuri Wine vs. DCIT', 48 ITR (Trib) 289 Chandigarh, following 'Attar Singh Gurmukh Singh vs. ITO', 59 Taxmann.com 11 (SC), 'Gurdas Garg vs. CIT', 63 Taxmann.com 289 (P & H), 'Smt. Harshila Chordia vs. ITO', 298 ITR 349 (Raj), Et al. It was held that even if the case of the assessee does not fall in any of the clauses of Rule 6DD of the Rules, invoking the provisions of section 40A(3) of the Act can be dispensed with if the assessee is able to prove the business expediency because of which it had to make the cash payment and if the genuineness of the transaction is verified.

16. In the present case, the genuineness of the transactions stands verified, since the identity of either the payee –transporter, or the truck drivers has not been questioned. The expediency for making the payments also stands established, since it has not been doubted that as per the business practice of transporters, the consignee is required to pay the freight to the truck drivers when they deliver the goods to the consignee. It is also not disputed that the truck drivers are illiterate, that they have no bank accounts at the place of the assessee and they deliver the goods to the assessee odd hours, mostly at mid-night.

17. As per the first proviso to section 40A(3A), which proviso, as per the proviso itself, is applicable to section 40A(3) as well, no disallowance shall be made u/s 40A(3) in cases and circumstances prescribed by Rule 6DD of the IT Rules, having regard to the nature and extent of banking facilities available, considerations of business expediency and other relevant factors.

18. Thus, in keeping with the host of decisions on the issue, wherein ‘Attar Singh Gurmukh Singh’ (supra), has been followed, having regard to the commercial expediency of the assessee in making the cash payments above the prescribed limit and the genuineness of the transactions, the existence of both of which factors does not stand challenged at the hands of either the Taxing

Authorities, or the Department before us, the deduction claimed by the assessee, amounting to Rs.8,52,002/- requires to be allowed. It is allowed. Ground No.2 is accepted.

19. In the result, the appeal is partly allowed.

Order pronounced in the open court on 30/08/2018.

**Sd/-
(DR. MITHA LAL MEENA)
ACCOUNTANT MEMBER**

**Sd/-
(A.D. JAIN)
JUDICIAL MEMBER**

AKV

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT AGRA**