

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “G” DELHI**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.As No.6115/Del/2018 & 4618/DEL/2019
Assessment Years 2014-15 & 2015-16

Shakti Singh Gulia H.No.305/26, Palika Colony Killa Mohalla, Bhadurgarh Distt Jhajja Bahadurgarh Haryana	v.	ITO Ward-4 Rohtak
TAN/PAN: ACWPG1881D		
(Appellant)		(Respondent)

Appellant by:	Shri Manoj Kumar, CA		
Respondent by:	Ms. Meenakshi Dohare, Addl.CIT		
Date of hearing:	06	06	2023
Date of pronouncement:	15	06	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeals have been filed by the assessee against the orders of the Commissioner of Income Tax (Appeals), Rohtak (‘CIT(A)’ in short) dated 23.07.2018 and 27.03.2019 arising from the assessment orders dated 30.12.2016 and 26.12.2017 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2013-14 and 2015-16 respectively.

2. The captioned appeals were heard together and are being disposed of by way of this consolidated order. For the sake of convenience, we shall first take up ITA No.6115/Del/2018

concerning Assessment Year 2014-15 for the purposes of adjudication.

ITA No.6115/Del/2018 Assessment Year 2014-15

3. The grounds of appeal raised by the assessee read as under:

“1 That the Ld CIT(A)-Rohtak has erred in law and on facts in sustaining the addition u/s.40A(3) made by the Ld AO of Rs.56,51,900.00 on untenable and illegal grounds. Hence, the addition as such may be deleted.

2 That the Ld CIT(A)-Rohtak has erred in law and on facts in sustaining the addition made by the Ld AO of Rs.50,000.00 on account of capital introduced by proprietor on untenable and illegal grounds. Hence, the addition as such may be deleted.”

4. As per the Ground No.1 of the appeal, the assessee has challenged the addition of Rs.56,51,900/- under Section 40A(3) of the Act.

5. Briefly stated, the assessee is engaged in the business of trading of liquor and also deriving income from salary/pension from Haryana Government. The assessee filed return of income at Rs.13,21,210/- which was subjected to scrutiny assessment. In the course of scrutiny assessment, the Assessing Officer *inter alia* observed that the assessee has made cash payments in excess of Rs.20,000/- against purchases to certain parties. The cash payment aggregating to Rs.56,51,900/- was found to be in contravention of provisions of Section 40A(3) of the Act. The Assessing Officer accordingly disallowed the expenses to the aforesaid extent by resorting to Section 40A(3) of the Act.

6. Aggrieved by the disallowance made under Section 40A(3), the assessee preferred appeal before the CIT(A). It was submitted

before the CIT(A) that the assessee is engaged in trading of country liquor where the Government issues license for trading. The distilleries who manufactures country liquor are also licensed and approved and monitored by the Government. The distilleries cannot sell their product to general public directly and they have to sell their product only to licensed vendors like assessee. Likewise, the licensed vendors is also obligated to procure the liquor from the licensed manufactures alone. The whole gamut of transaction is thus under lens and supervision of the Government. Noticeably, each and every time when license holder procures country liquor from the distilleries, it has to obtain permit from Government Department, i.e., Excise Authorities and the Government Department issues permit after taking permit fee. Furthermore, permit is issued for fixed number of bottles only for which the permit fee is paid.

6.1 Further, the license holder cannot purchase the country liquor from only one distillery of his choice but he is required to purchase from different distilleries as directed by the Government Department. Hence, he is effectively compelled by the Government to pay in cash. Further, the staff/employees of the distilleries are also wandering around the country liquor shops and collect cash almost on daily basis from these shops for the supplies made. In the peculiar business of the assessee-company, use of cash as a spot payment is a matter of business expediency.

6.2. The assessee relied upon several judgments to support its case of *bona fides* and non applicability of Section 40A(3) of the Act in the backdrop of peculiarity of business.

6.3 The CIT(A) however did not find merit in the plea of the

assessee towards existence of business expediency and reasonable cause associated for cash purchases. The CIT(A) observed that the onus is upon the assessee to establish his case for exclusion from the ambit of Section 40A(3) of the Act having regard to Rule 6DD of the IT Rules. The CIT(A) observed that the assessee has failed in making out a case that his case is covered by Rule 6DD of the Rules. The CIT(A) thus upheld the action of the Assessing Officer towards additions for violation of provisions of Section 40A(3) of the Act r.w. Rule 6DD of the Income Tax Rules.

7. Further aggrieved, the assessee preferred appeal before the Tribunal.

8. When the matter was called for hearing, the ld. counsel for the assessee submitted at the outset that Financial Year 2013-14 relevant to Assessment Year 2014-15 was the first year of his liquor business and the assessee was engaged in this business only for two Assessment Years 2014-15 and 2015-16 in question. The business was closed within two years of operations.

8.1 To support his case for non applicability of Section 40A(3) in the context of the facts of the case, the ld. counsel submitted that;

(i) the assessee is a new entrant and an unknown name in the business and therefore, the trust quotient and goodwill in the market is comparatively low. To support the fact of being new entrant, the ld. counsel referred to annual statement from 26AS and submitted that the first purchase was carried out on 31.03.2013 and the last purchase was made on 21.03.2015 and thus the assessee was engaged in

effective business for only two Financial Years 2013-14 and 2014-15.

(ii) The aggregate cash purchase of 56.51 lakh under scanner is from four parties. The total purchase from these four parties is about 365.44 lakh and the cash component is only 56.51 lakh. Likewise, in Assessment Year 2015-16 six parties are involved and the cash payment to these six parties is 96.14 lakh as against the total purchases from such parties is 690.31 lakh.

(iii) Most of the cash deposits are made in the bank account of the respective parties to procure consignment of liquor on spot basis.

(iv) The entire purchase transactions, be it in cash or in cheque, with these parties have been subjected to TCS as per the provisions of the Act. The parties are thus identifiable and the purchases are vouched by corresponding tax collection at source on such purchases.

(v) The assessee is forced to pay cash to meet the immediate demand of certain items for which stocks get depleted and assessee in the absence of any alternative makes payment in cash to obtain immediate supplies.

(vi) One of the supplier distillery company, namely, Panipat Co-operative Sugar Mills Ltd. operates under the dictate and command of the Government and therefore, the payment made to one of the parties is actually government owned and controlled.

(vii) The object of Section 40A(3) is to prevent and curtail the creation of black money. The provisions of Section 40A(3) is designed to counter the evasion of tax from wrongful claims of unidentified expenditure shown to have incurred in cash with a view to frustrate proper investigation by the Department as to the identity of the payee and the reasonableness of the payment. The consequences, which were to befall on account of non observance of Section 40A(3) must have nexus to the failure of such object. The parties being identifiable and purchase subject to TCS provisions, the object sought to be achieved by Section 40A(3) is not eroded in the instant case.

viii. Rule 6DD is illustrative rather than exhaustive. A reference was made to the judgment in the case of *Gurdas Garg vs. CIT(A) (2015) 63 taxmann.com 289 (P&H)* in this regard albeit in the context of Rule 6DD(j) of Rules which now stands omitted.

ix. The genuineness of transaction made in cash in excess of Rs.20,000/- has not been disbelieved by the authorities but the disallowance has been carried out merely on account of breach of Section 40A(3) of the Act as a routine exercise.

8.2 The ld. counsel thus essentially submits that the disallowance under Section 40A(3) is not proper when due weightage is given to the totality of the circumstances and considerations of business expediency existing in the present case as contemplated in Section 40A(3A) of the Act and mere removal of clause (j) to Rule 6DD from Assessment Year 1996-97 by itself

is not a compelling factor to necessarily disallow expenses incurred under the umbrella of Section 40A(3) of the Act when cogent evidences are available to prove the *bona fides* of the cash transactions in question together with identity of recipients.

8.3 The Id. counsel thus urged for appropriate relief by way of cancellation of the disallowance carried out by the Assessing Officer and erroneously confirmed by the CIT(A).

9. The DR for the Revenue, on the other hand, relied upon the orders of the lower authorities and in furtherance submitted that provisions of Section 40A(3) imposing restrictions on cash payments would be triggered in the case of the assessee except in the circumstances listed under Rule 6DD of the Income Tax Rules. The Ld. DR submitted that the case of the assessee have not been shown to fall within any of the clauses of Rule 6DD of the Rules and therefore, the assessee is not entitled to any relief from the applicability of Section 40A(3) of the Act. The Ld. DR also submitted that having regard to robust banking facilities available these days and sophisticated digital platform for banking, the transfer of money through banking channel should not be seen as any impediment unlike good old days. The Ld. DR thus urged for upholding the action.

10. We have carefully considered the rival submissions and perused the assessment order as well as the first appellate order and also the material referred to and relied upon in the course of hearing and the case law cited.

10.1 The applicability of Section 40A(3) towards cash purchases of the liquor from suppliers is in controversy. The provisions of

Section 40A(3) read with Section 40A(3A) of the Act seeks to disincentivise the cash transactions in cash beyond prescribed unit (Rs.20000 limit for the AYs in question). The Assessing Officer has thus disallowed the expenses incurred on purchases of liquor etc. where payments have in found to be made in cash in breach of prescribed limit under Section 40A(3) of the Act.

10.2 It is the case of the assessee that he is engaged in a very peculiar business of liquor trading where to meet the sudden demand, the assessee is called upon to make payment in cash to get uninterrupted supplies from the distillery companies. It is further case of the assessee that the business operates in a highly government regulated environment where the distillery companies are licensed suppliers as also its customers including the assessee who is also a permit holder for purchase of liquor bottles. Coupled with this, the assessee being a new entrant in the business, does not enjoy the goodwill needed for supplies on credits and without actual transfer of funds. The assessee is thus perforce required to make cash payments on certain occasions to obtain immediate supplies. The assessee further submits that the supplies were received from existing parties. Both cash payments as well as in cheque payments were equally subjected to TCS provisions. All transactions are thus identifiable and on the record of the Income Tax Department. This being so, the propriety of cash transaction is beyond any aspersion nor has the Assessing Officer disbelieved the cash transactions carried out with identified parties although a part of total payment was reimbursed in cash.

10.3 To appreciate the facts in its perspective, the assessee has provided tabular statement of transaction with parties in both the

assessment years in question as reproduced hereunder:

Assessment Year 2014-15

<i>S. No.</i>	<i>Name of Party</i>	<i>TAN Number</i>	<i>Cash Payment part</i>	<i>Bank payment</i>	<i>Total Purchase</i>	<i>TCS</i>
1.	M/s. ADS Spirits Pvt. Ltd.	DELA26813D	3594900	7620146	11215046	112151
2.	The Panipat Co-op Sugar Mills Ltd.	RTKT01329G	1300000	629780	1929780	19298
3.	M/s. Frost Falcon Distillery	DELF02254A	150000	3715068	3865068	38650
4.	M/s. NV Distilleries Private Ltd.	RTKN02286ELtd.	607000	18928004	19535004	195349
	Total		5651900	30892998	36544898	365448

Assessment Year 2015-16

<i>S. No.</i>	<i>Name of Party</i>	<i>TAN Number</i>	<i>Cash Payment part</i>	<i>Bank payment</i>	<i>Total Purchase</i>	<i>TCS</i>
1.	M/s. ADS Spirits Pvt. Ltd.	DELA26813D	1178000	1795590	2973590	29736
2.	The ADIE Broswon Distillers and Bottlers Pvt. Ltd.	LKNA07119A	600000	1673694	2273694	22736.94
3.	M/s. Oasis Commercial Pvt. Ltd.	RTKO01614E	850000	17097648	17947648	179476
4.	M/s. NV Distilleries Private Ltd.	RTKN02286ELtd.	492000	15743664	16235664	162359
5.	Associated Distilleries (Globus Spirit Ltd.)	DELG06683F	5177500	5205004	10382504	103525
6.	Globus Spirit Ltd.	DELG06683F	1543500	1767522	19218722	192184.26
	Total		9841000	59190822	69031822	690017.26

10.4 On a perusal of the party-wise details tabulated hereinabove, it

is seen that the cash payments made to the parties are comparatively low and the majority of transaction appears to have been carried out through banking channel. This notwithstanding, tax on liquor purchases have been collected on all the party-wise purchases and reflected in the Annual Information Statement (AIS) prepared by the Income Tax Department. Thus, the transactions carried out in cash are duly reported and made available under the lens of the Income Tax Department.

10.5 At this juncture, we may reckon that terms of Section 40A(3) r.w.s. 40A(3A) are not absolute. Consideration of business expediency and other relevant factors are not excluded from the ambit of these provisions. Genuine and *bona fide* transactions are not taken out of the sweep of such provisions. In the light of nature of business, the assessee has sufficiently demonstrated that strict adherence to payment through banking channel is, at times, not practicable and has the potential to severally hamper the ongoing business. No *mala fide*, in our view, can be attributed to the action of the assessee where he is new entrant and the demand of liquor in such business is generally asymmetric. No evasion of tax through cash payment can be envisaged in the present case owing to such transactions. The Revenue on its part has not attempted to discover any evasion by making enquiries from the parties and has merely applied the provisions of Section 40A(3) summarily as a matter of course based on data provided by assessee. To our mind, the disallowances are not justified in the totality of facts and circumstances placed before us.

10.4 The Co-ordinate Bench of the Tribunal in the case of *ITO vs. Suresh Kumar (2021) 124 taxmann.com 563 (Delhi Tribunal)* and *Geo Connect Ltd. vs. DCIT, 2896/Del/2018* has taken note of

judgment delivered by the Hon'ble Supreme Court and various High Courts on the schematic interpretation of provisions of Section 40A(3) of the Act and observed that the considerations of business expediency and other relevant factors embedded in provisions of Section 40A(3) and Section 40A(3A) are not diluted by the amendment in Rule 6DD of the IT Rules which is merely a delegated legislation. The Co-ordinate Bench discharged the assessee from the clutches of Section 40A(3) where the business expediency to make payment in cash was found to be reasonably established. In the instant case, the circumstances narrated on behalf of the assessee provide reasonable ground to show-case considerations of business expediency and existence of relevant factors which warranted cash payments in the wisdom and perspective of a businessman. Be that as it may, the cash transactions, in any case, have been subjected to TCS collections etc. and are thus duly made chargeable to tax in the hands of the recipient. No enquiries have been made on behalf of the Revenue to dislodge the *bona fides* of the cash purchases. Nonetheless, the suppliers and recipients of cash are identified parties and well regulated.

10.5 Thus in totality, we find merit in the case made out on behalf of the assessee for exoneration from the clutches of Section 40A(3) in the peculiar facts of the present case. The action of the CIT(A) is thus set aside and the additions made by the Assessing Officer under Section 40A(3) are thus reversed and cancelled.

11. Ground No.1 of the appeal of the assessee is allowed.

12. Ground No.2 concerns additions of Rs.50,000/- on account of capital introduced by proprietor. It is contended by the CIT(A) that the capital amount of Rs.50,000/- is out of withdrawal from the bank account with State Bank of India where the pension of the assessee

is credited. The copy of bank passbook reflecting cash withdrawal were stated to be filed before the CIT(A). The CIT(A) however rejected the explanation of the assessee on the ground that withdrawal made from the bank could be utilized for household expenses and the onus towards availability of cash is not discharged in the present case.

13. Before us, the assessee has failed to lead any cogent evidence to rebut the observations of the CIT(A). We thus are in no position to traverse the facts and decide independently. We thus see no reason to interfere with the approach of the CIT(A).

14. Ground No.2 of the assessee appeal is thus dismissed.

15. In the result, the appeal of the assessee for Assessment Year 2014-15 is partly allowed.

ITA No.4618/Del/2019 Assessment Year 2015-16

16. The grounds of appeal raised by the assessee read as under:

“1 That the Ld CIT (A)-Rohtak has erred in law and on facts in sustaining the addition made by the Ld AO of Rs. 98,41,000.00 on untenable and illegal grounds. Hence, the addition as such may be deleted.

2 That the Ld CIT (A)-Rohtak has erred in law and on facts in sustaining the addition made by the Ld AO of Rs. 98,41,000.00 by invoking section 40(3) on untenable and illegal grounds. Hence, the addition as such may be deleted.”

17. As per the grounds of appeal, the assessee has challenged additions of Rs.98,41,000/- under Section 40A(3) of the Act in the similar factual matrix. The facts and issue are identical to Ground No.1 of the appeal of the assessee in Assessment Year 2014-15. In consonance with the view expressed in Assessment

Year 2014-15, the additions made under the shelter of Section 40A(3) of the Act by the Revenue Authorities is thus reversed.

18. The appeal of the assessee for Assessment Year 2015-16 is thus allowed.

19. In the combined result, the appeal of the assessee for the Assessment Year 2014-15 in ITA No.6115/Del/2018 is partly allowed whereas appeal for the Assessment Year 2015-16 in ITA No.4618/Del/2019 is allowed.

Order pronounced in the open Court on 15/06/2023.

Sd/-

[CHANDRA MOHAN GARG]
JUDICIAL MEMBER

DATED: **/06/2023**

Prabhat

Sd/-

[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER