

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'एस.एम.सी', मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH MUMBAI
BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.6487/Mum/2014

(निर्धारण वर्ष / Assessment Year :2010-2011

M/s Raj Wines, C/o P.N.Subramanian & co., 703-704, 7 th Floor, Commodity Exchange Bldg., Plot No.2,3&4, Sector-19, Vashi, Navi Mumbai-400705	Vs.	ITO, Ward-4(3), thane, 6 th Floor, Ashar IT Park, Road No.16-Z, Wagle Industrial Estate, Thane-400604
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAGFR 5657 L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri Suresh Subramanian

राजस्व की ओर से /Revenue by : Shri Arvind Kumar

सुनवाई की तारीख / Date of Hearing : **04/07/2016**

घोषणा की तारीख/Date of Pronouncement **26 /09 /2016**

आदेश / O R D E R

This is an appeal filed by the assessee against the order of CIT(A)-Mumbai, for the assessment year 2010-2011.

2. This appeal is barred by 5 days. Considering the facts and circumstances of the case and the submission made by the assessee in its application dated 4-12-2014, for condonation of delay, I condone the delay of 5 days in filing the present appeal in the interest of substantial justice and appeal is heard on merit.

3. In this appeal the assessee is aggrieved for disallowance made by AO u/s.40A(3), which was confirmed by the CIT(A).

4. Rival contentions have been heard and record perused. The assessee is a retail dealer in wines conducting his business in Virar for

over 2 decades. Assessee's business model involves selling wines and alcoholic beverages across the counter and realize payment thereof in cash from the customer. The products in turn are purchased from wholesale vendors to whom payment is made invariably by cheque, but on rare occasions by cash. During the previous year relevant to the subject assessment year, the assessee had made total purchases of Rs.4,30,87,568/-. Out of these purchases, an amount of Rs.1,01,56,156 (23.57%) are purchases from M/s Pinku Traders and an amount of Rs.70,52,219 (16.36%) are purchases from M/s Kalani Marketing. During the year, the assessee had paid amounts totalling to Rs.77,88,385 and Rs.78,15,295 to M/s Pinku Traders and M/s Kalani Marketing respectively. Out of these payments Rs.16,04,183 (20.59% - 11 payments out of 51 payments) and Rs.12,25,790 (15.68% - 2 payments out of 38 payments) were made in cash. The AO disallowed payment by invoking provisions of Section 40A(3) r.w.rule 6DD. By the impugned order CIT(A) confirmed the action of AO.

5. I have considered rival contentions and found that the payments in cash were necessitated due to business exigencies, to enable regular supplies from these vendors. The peculiarities of the business are such that certain brands are in greater demand as compared to others. To ensure regular supply of these high demand items, it is necessary that payments are made across the table to these parties and enable timely supply of stock of such items. The detailed submissions in respect of the necessity to make these payments were explained to the learned AO in

the course of assessment proceedings and the same have been reproduced by the learned AO in his order. The transactions entered into by the assessee were also confirmed by the vendors 'respectively, as also by their respective AOs in the course of proceedings under section 133 (6) of the Act. Therefore, the bonafide nature of the transaction is already established by account confirmations from the respective parties. I also found that all these payments were made on Saturday and Sunday when the banks were closed. Merely because entry in the books were shown in the next date, fact of payment having been made on Saturday and Sunday when the banks remain closed, cannot be denied. The Allahabad High Court in the case of CIT vs Raja Pal Automobiles (2010) 320 ITR 185, had held that in case the nature of business, which indicates that it cannot be done solely by crossed cheque or bank draft and the payment is proven from bills and cash memos, exceptional circumstances could be inferred, when it could be entertained under the Rules, where it is genuine and the payee is identified. Various courts in the case of err vs Chaudhary & Co (1996) 217 ITR 431 (All); George & Sons vs. ACIT (2006) 286 ITR 389 (Ker); Tarn Tarn Pedda Guruva Reddy vs JCIT (2007) 291 ITR 44 (Kar) have held that Section 40 A (3) is not absolute in its terms. Accordingly, where there is a genuine finding that the seller has insisted on cash payment and the payment is genuine; amount cannot be disallowed. Isn CIT vs Pravin & Co (2005) 274 ITR 534 (Guj), it was held that the practicality of the payment should be judged from the view of the businessmen and not the Assessing Officer. Various courts in the case of

Girdharilal Goenka vs CIT (1989) 179 ITR 122 (Cal); Venkata Subba Rao vs CIT (1988) 173 ITR 340 (AP); CIT vs Dalip Chand & sons (2008) 301 ITR 276 (HP); Harshila Chordia vs ITO (2008) 298 ITR 349 (Raj) have held that the circumstances set out in Rule 6DD and Board Circulars are illustrative and not exhaustive and the AO has to take into account the surrounding circumstances and considerations of business expediency and the facts of each particular case in exercising discretion either in favour or against the assessee.

6. We also found that the assessee has declared more than 10% of net profit of its gross turn over, therefore, there is no justification for coming to the conclusion that by purchasing in cash, assessee has earned extra profit.

6. In view of the peculiarity of the business and the genuineness of the payments, as decided by various judicial authorities, the additions of Rs.14,19,789 and Rs. 12,25,790 under Section 40A(3) of the Act, is directed to be deleted.

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

Order pronounced in the open court on this 26/09/2016.

**Sd/-
(R.C.SHARMA)**

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 26/09/2016

प्र.कु.मि/pkm, नि.स/ PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A), Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai

6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार

(Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai