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**(2016) 01 RAJ CK 0203**  
**In the Rajasthan High Court**  
**Case No : Income Tax Appeal No. 2 of 2015**

Commissioner of Income Tax

APPELLANT

Vs

The Solution

RESPONDENT

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**Date of Decision :** 04-01-2016

**Acts Referred:**

Income Tax Act, 1961 — Section 260A, Section 40(A)(3)(a), Section 40A, Section 40A(3), Section 40A(3)(a), Section 44AB

**Citation :** (2016) 382 ITR 337

**Hon'ble Judges :** Ajay Rastogi and J.K. Ranka, JJ.

**Bench :** Division Bench

**Advocate :** R.B. Mathur, Advocate, for the Appellant;

**Final Decision :** Dismissed

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## Judgement

J.K. Ranka, J.—1. Instant Income-tax Appeal under section 260A of the Income-tax Act, 1961 (for short "Act"), is directed against the order dated September 5, 2014, passed by the Income-tax Appellate Tribunal, Jaipur Bench, Jaipur (for short, "Tribunal") and relates to the assessment year 2008-09. Brief facts noticed are that the respondent-assessee is engaged in the business of supplying diesel at various sites of M/s. Idea Cellular Company and is stated to have maintained regular books of account consisting of cash books, ledgers, vouchers and accounts are audited under section 44AB of the Act.

2. During the course of assessment proceedings, on having perused the books of accounts, the Assessing Officer (for "AO") noticed that the assessee has debited huge expenses of Rs. 3,32,22,178 on account of purchase of diesel and on a further enquiry about the details of purchases of the aforesaid diesel, it was noticed by the Assessing Officer that the assessee had made payment in cash exceeding Rs. 20,000 to various suppliers throughout the State and the cash purchase through the said suppliers was Rs. 2,40,85,381. The assessee also claimed cash payment of Rs. 29,189 under the head vehicle running and maintenance expenses and dissatisfied with the aforesaid cash payments

exceeding Rs. 20,000, the Assessing Officer issued a show-cause notice as to why the said amount under section 40A(3)(a) may not be disallowed as it is in violation of the said provision. However, it was contended by the respondent that the assessee is engaged in the business of supply of diesel at various sites of M/s. Idea Cellular Company through the agents appointed for this purpose and agreements with the various agents were also furnished. It was further contended that the agents purchase diesel from the local petrol pumps and supply it to the sites of M/s. Idea Cellular Company in that area and the assessee deposits the amount in the bank account of the agents, who are located at various locations including interior and remote places in Rajasthan and contended that as per rule 6DD(k), it is covered by the said definition and provisions of section 40A(3)(a) are inapplicable. However the Assessing Officer was dissatisfied and made disallowance of the entire amount of Rs. 2,41,14,570.

3. On an appeal, the Commissioner of Income-tax (Appeals) for short, "CTT(A)") allowed the claim of the assessee and deleted the entire disallowance under section 40A(3)(a). On an appeal by the Revenue before the Tribunal, the view of the Commissioner of Income-tax (Appeals) was upheld and the appeal of the Revenue was dismissed.

4. Learned counsel for the appellant contended that the payment was made in utter violation of the provisions of section 40A(3)(a) and thus the Assessing Officer was well justified in disallowing the said amount. The assessee was well aware that violation of section 40A(3)(a) entails total disallowance and despite the same, it made cash payments and therefore, the addition was well justified by the Assessing Officer and has wrongly been deleted by the Tribunal. He relied upon the judgment rendered by the Kerala High Court in the case of MRS Roadways v. CIT , [2014] 367 ITR 62 (Ker) and contended that the Kerala High Court in identical circumstances in a case of a transporter has held that provisions of section 40A(3) are applicable and contended that substantial question of law arise out of the order of the Tribunal.

5. We have heard learned counsel for the Revenue and have perused the impugned order and in our view, no substantial question of law can be said to arise out of the order of the Tribunal as it is a finding of fact recorded by the Commissioner of Income-tax (Appeals) as well as the Tribunal that the assessee had appointed various representatives/agents for various locations numbering 110 who purchased diesel/petrol from dealers of the petrol pumps and arranged supply to various locations of diesel generating sets for Idea Cellular Company. The petrol pump asked for payment in cash as neither the assessee nor the agents were known to them and it was neither practicable nor feasible for the assessee to open office or branch at every location. It is also an admitted fact that the assessee has placed on record the agreements with the various agents and it is a finding of fact recorded by the Commissioner of Income-tax (Appeals) as well as the Tribunal that "these payments are not made in cash to the agents but the amount has been deposited in their bank account at a branch at Jaipur

and in these times of e-banking payment can be drawn by the agents out of their bank account. Thereafter withdrawing from their bank account the payment has been made to the petrol pumps". It is in this backdrop that finding of fact has been recorded that no cash payment was made directly to the agents but was deposited in their respective bank accounts. Therefore, in our view, the Tribunal has come to a correct finding that transaction, if any, was not by cash so as to come within the purview of provisions of section 40A(3)(a). The Tribunal alternatively has also held that the case of the assessee falls under the exception clause of rule 6DD(k) as the assessee has made the payment to the bank account of the agents who were required to make payment in cash for buying petrol and diesel at different locations.

6. For ready reference, it would be appropriate to quote section 40A(3)(a) and rule 6DD which reads ad-infra:

"S. 40A.(3)(a) Where the assessee incurs any expenditure in respect of which payment is made in a sum exceeding twenty thousand rupees otherwise than by an account payee cheque drawn on a bank or account payee bank draft, no deduction shall be allowed in respect of such expenditure."

"Rule. 6DD. Cases and circumstances in which payment in a sum exceeding twenty thousand rupees may be made otherwise than by an account payee cheque drawn on a bank or account payee bank draft--No disallowance under clause (a) of sub-section (3) of section 40A shall be made and no payment shall be deemed to be the profits and gains of business or profession under clause (b) of sub-section (3) of section 40A where any payment in a sum exceeding twenty thousand rupees is made otherwise than by an account payee cheque drawn on a bank or account payee bank draft in the cases and circumstances specified hereunder, namely:--...

(k) 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 such person."

7. On perusal of the above, in our view also, the case of the assessee can be said to cover in the exception of rule 6DD(k), quoted (supra) as the payment is made by any person (assessee) to his agent who is required to make payment in cash for goods or services on behalf of such person (in the instant case, the assessee). The assessee has made the payment to the bank account of the agent which is a finding recorded by the Tribunal who was required to make payment in cash for buying petrol or diesel at different locations.

8. As regards the judgment rendered in the case of MRS Roadways v. CIT (supra), relied upon by learned counsel for the appellant, the facts are distinguishable as the Kerala High Court found that even the appellate authority found that the said assessee was engaging lorries on hire from the market through brokers; the assessee was not paying any amount to the concerned lorry owners and even according to the assessee lorry freights are finalised with the lorry owners and such lorry owners cannot be considered as the agents of the

assessee and since the assessee is neither the owner of the goods nor the owner of the vehicle carrying the goods, therefore, the assessee did not fall within the exemptions covered in rule 6DD and found that no substantial question of law emerge and accordingly dismissed the appeal. The facts, as noticed herein above and found by the Tribunal in the instant case, are distinguishable as in the instant case, the assessee has directly engaged the agents to function for and on behalf of the assessee and admittedly such agreements with the various agents have been placed on record by the assessee and payments have been deposited in the respective bank accounts of the agents. Therefore, in our view, the judgment is distinguishable and not applicable on the facts of the instant case.

9. The Appellate Authorities have relied upon the judgment rendered in the case of Attar Singh Gurmukh Singh v. ITO , [1991] 191 ITR 667 (SC), where the hon"ble apex court has observed as under (page 673):

"The terms of section 40A(3) are not absolute. Consideration of business expediency and other relevant factors are not excluded. Genuine and bona fide transactions are not taken out of the sweep of the section. It is open to the assessee to furnish to the satisfaction of the Assessing Officer the circumstances under which the payment in the manner prescribed in section 40A(3) was not practicable or would have caused genuine difficulty to the payee. It is also open to the assessee to identify the person who has received the cash payment. Rule 6DD provides that an assessee can be exempted from the requirement of payment by a crossed cheque or crossed bank draft in the circumstances specified under the rule. It will be clear from the provisions of section 40A(3) and rule 6DD that they are intended to regulate business transactions and to prevent the use of unaccounted money or reduce the chances to use black money for business transactions."

10. The aforesaid observation does apply in the instant case. The Assessing Officer on the facts noticed has been unable to make out a case of involvement of unaccounted money.

11. It is also a finding of fact recorded by the Commissioner of Income-tax (Appeals) that copies of the ledger accounts were produced before the Assessing Officer who has not found any discrepancy in such books of account and no unaccounted transaction has been reported/noticed by the Assessing Officer.

12. Taking into consideration the above factors, in our view, the finding arrived at by the Tribunal is essentially a finding of fact based on the material and in our view, no question of law much less substantial question of law can be said to arise out of the order passed by the Tribunal. Consequently, the appeal, being devoid of merit is hereby dismissed.