

**आयकर अपीलीय अधिकरण "F" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI**

**BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER  
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.5117/Mum/2017

(निर्धारण वर्ष / Assessment Year : 2014-15)

V Bird Shipping Agencies Private Limited, 03, Shalom Heritage, Opp. RBK School, Phase 6, Indralok, Bhayandar (E), Thane - 401105	<b>बनाम/</b>  v.	DCIT Circle- 1(3)(2) Aayakar Bhawan M K Road Mumbai-400020
स्थायी लेखा सं./PAN: AACCV8654Q		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )
Assessee by:	None	
Revenue by:	Shri Rajiv Gubgotra (DR)	

सुनवाई की तारीख /**Date of Hearing** : 11.03.2019

घोषणा की तारीख /**Date of Pronouncement** : 11.03.2019

**आदेश / ORDER**

**PER RAMIT KOCHAR, Accountant Member:**

This appeal, filed by assessee, being ITA No. 5117/Mum/2017, is directed against appellate order dated 27.06.2017 in Appeal No. CIT(A)-3/IT-157/DCIT-1(3)(2)/16-17, passed by learned Commissioner of Income Tax (Appeals)-3, Mumbai (hereinafter called "the CIT(A)"), for assessment year (AY) 2014-15, the appellate proceedings had arisen before learned CIT(A) from the assessment order dated 30.12.2016 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income-tax Act, 1961 (hereinafter called "the Act") for AY 2014-15.

2. The grounds of appeal raised by the Assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called “the tribunal”) read as under:-

*“CIT(A) erred in partly allowing of additions done by Ld. AO u/s 40A(3).”*

3. The brief facts of the case are that the assessee is engaged in the business of shipping, logistics & freight forwarders. During the course of assessment proceedings conducted by the AO u/s 143(3) read with Section 143(2) of the 1961 Act, it was observed by the AO that the assessee has incurred cash expenditure totalling to Rs. 60,11,502/- as per date wise list submitted by assessee. The assessee was asked by the AO to produce bills/invoices for these cash expenses. The assessee submitted zerox copies of part of self made cash vouchers totalling to Rs. 12,26,757/- . For rest of the cash expenses, the assessee submitted summary of cash vouchers and confirmations vide Annexure-3, which is reproduced hereunder:-

Annexure 3 : Cash Vouchers/Confirmations/BillsSummary of Cash Vouchers/Confirmation Provided

	Amount
1. Provided on Hearing dated 13th Dec 2016	1,226,757
2. Refer below parties	4,090,069
<b>Total</b>	<b>5,316,826</b>

Further bills/confirmations/cash vouchers are being submitted of following parties:

SR.NO.	PARTY NAME	Amount
1	Concor Delhi	65,000
2	Container Corporation of India Ltd	27,000
3	EMU LINES PVT LTD	521
4	GLOBELINK WW INDIA PVT LTD	26,581
5	Hub & Links Logistics (I) Pvt Ltd	82,928
6	INDRAPRASTH FOODS	709
7	J D IMPEX	529
8	JAY CONTAINER SERVICES CO PVT LTD	58,849
9	KALIDAS NARSINH & CO.	1,178
10	KALPANA SHIPPING AGENCY	3,289
11	KOTAK GLOBAL LOGISTICS LTD	659
12	LINKS CARGO AGENCIES PVT LTD	1,138
13	MASHOOD SHOPPING CENTRE	2,500
14	MODESTY SHIPPING SERVICES	5,057
15	Novel Sewing Machine Technologies	27,081
16	ONEWORLD SHIPPING SERVICES PVT LTD	6,623
17	P J SHANKLESHA JEWELLERS	250,000
18	P.H. Mehta (I/c)	7,800
19	PERFECT LOGICARE PVT LTD	1,580
20	Perumal Raj Bhoominath	41,107
21	Pinnacle Marine Service Pvt Ltd	30,811
22	Rani Soft Drinks Pvt Ltd	175,774
23	Rediant Maritime Pvt Ltd	5,509
24	Sanjay Sales Corporation	15,453
25	Scrap Steel Pvt Ltd	4,879
26	SEAGULL MARITIME AGENCIES PVT LTD (I/c)	40,549
27	SIMPEX OVERSEAS PVT LTD (I/c)	2,000
28	SOMAIYA SHIPPING CLEARING PVT LTD	2,028
29	Sunshine Ent	8,334
30	TRISTAR FREIGHT FORWARDERS	339
31	V R Logistics Pvt Ltd	13,929
32	VIRAJ PROFILES LTD	16,314
33	Emkay Lines Pvt Ltd	1,498,003
34	Excellent Auto Care Pvt Ltd	261,179
35	Jason Shipping Agency	225,620
36	Neptune Container Line Logistics Pvt Ltd	217,670
37	Ocean Gate Container Terminals Pvt Ltd	274,820
38	Ravian Shipping Line LLC	274,619
39	Hotel Bills - Refreshment	197,110
40	Confirmation - Yogendra Singh	50,000
41	Confirmation - Amit Singh	165,000
	<b>Total</b>	<b>4,090,069</b>

3.2 Thus, the assessee claimed before the AO to have submitted details of cash expenses of Rs. 53,16,826/- out of total cash expenses of Rs. 60,11,502/- . For the balance cash expenses, it was submitted that some files are misplaced and the assessee is trying to collate the details . The letter furnished by the assessee is reproduced here under:-

“

5. With respect to Cash Vouchers/Bills/Confirmations:

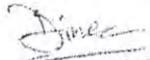
Assessee submits the further Cash vouchers/ Bills / Confirmations in Annexure 3 (Refer Annexure -3)

Almost 90% Cash Vouchers / Bills / Confirmations are provided to you and regarding the remaining, the assessee is trying to collate. The assessee requests to provide some time to collate the same as the office is being shifted after FY 2013-14 from Fort (Mumbai) to Ghatkopar. Hence some files are being misplaced and some are kept at other location (Farm House of Mr. Yogendra Singh) due to non availability of room in their new office. Majority of Cash Expenses other than cash expenses for Conveyance, refreshment, travelling, and other related office expenses are incurred for freight/transportation, commission etc which are normally paid in cash to regulate the business. For example –

1. If get any assignment regarding hiring of containers then if containers are at different port or at different place which is situated at a different location then the assessee needs to hire some transporter to take their container at the right place where the assessee wants, for this many times amount is paid in cash and the assessee takes signature of the person to whom cash is paid on self generated vouchers.
2. If assessee gets work/assignment by reference then assessee pays commission for referring the business, then most of the times commission is paid in cash and the assessee takes signature of the person to whom cash is paid on self generated vouchers.

6. With respect to TDS Deducted details we hereby submit you the required details in your format prescribed. (Refer: Annexure – 4)

Yours faithfully,

  
CA Dinesh Saini

”

3.3 The AO disallowed cash expenses to the tune of Rs. 47,93,956/-, out of which cash expenses to the tune of Rs. 37,92,591/- were disallowed being in excess of Rs. 20,000/- infringing Section 40A(3) of the 1961 Act for which only zerox copies of self made vouchers were furnished by the assessee before the AO. The assessee did not produced bills/invoices for the same and as per the AO it infringed Section 40A(3) of the 1961 Act as cash expenses exceeded Rs. 20000/-. The assessee also did not produced books of accounts before the AO. The details of disallowance of cash expenses of Rs. 37,92,591/- by the AO vide assessment order dated 30.12.2016 passed u/s 143(3) of the 1961 Act by invoking provisions of Section 40A(3) of the 1961 Act, is reproduced hereunder:-

“

1.	Concor Delhi	65000
2.	Container Corporation of India Ltd.	27000
3.	Globelink WW India Pvt.Ltd.	26581
4.	Hub & Links Logistics India Pvt.Ltd.	82928
5.	Jay Container Services	58849
6.	Novel Sewing Machine Technologies	27081
7.	PJ Shanklesha Jewellers	250000
8.	Perumal Raj Bhoominath	41107
9.	Pinnacle Marine Service Pvt.Ltd.	30811
10.	Rani Softdrinks Pvt.Ltd.	175774
11.	Seagull Maritime Agencies Pvt.Ltd.	40549
12.	Emkay Lines Pvt.Ltd.	1498003
13.	Excellent Autocare Pvt.Ltd.	261179
14.	Jason Shipping Agency	225620
15.	Neptune Container Line Logistics Pvt.Ltd.	217670
16.	Ocean gate container Terminals P.Ltd.	274820
17.	Ravian Shipping Line LLC	274619
18.	Confirmation - Yogendra Singh	50000
19.	Confirmation - Amit Singh	165000
		3792591

”

3.4 There were other reasons for making further disallowances by AO vide assessment order dated 30.12.2016 passed u/s 143(3) of the 1961 Act towards cash expenses but since assessee got relief from Ld. CIT(A) on those account and it is not shown to us by learned DR that the Revenue has filed an appeal against part relief granted by learned CIT(A) , we have not discussed the same in this order.

4. Aggrieved by an assessment framed by the AO vide assessment order dated 30.12.2016 passed u/s 143(3) of the 1961 Act, the assessee filed first appeal before learned CIT(A). The Ld. CIT(A) was pleased to confirm the disallowance of cash expenses to the tune of Rs. 37,92,591/- , vide appellate order dated 27.06.2017 by holding as under:-

“ 6.2 I have carefully considered the rival submissions and facts of the case. The undisputed fact in the case is that the appellant has made cash expenditure amounting to Rs. 60,11,502/-, which require certain norms to be fulfilled as per the provisions of Section 40A(3) and other Sections of the IT Act. The appellant has not produced sufficient evidence and the convincing reasons to incur a cash payment which is not allowable as per the IT Act, to certain extent. In view of the same, payment of Rs. 37,92,591/- in excess of Rs. 20,000/-

*made in cash in violation of section 40A(3) of the IT Act, need to be disallowed. Therefore, out of the total disallowance of Rs. 47,93,956/- an amount of Rs. 37,92,591/- is confirmed and thus appellant get a relief of Rs. 10,01,365/-. Hence, the Ground no. 1 is partly allowed.”*

4.2. Before Ld. CIT(A) , the assessee failed to justify why disallowance u/s. 40A(3) of the 1961 Act be not sustained. The assessee contended that these cash expenses are fractional amount vis-a-vis turnover which was rejected by learned CIT(A). There is a concurrent finding by both the authorities below that the assessee had infringed provisions of Section 40A(3) of the 1961 Act and cash payment exceeding Rs. 20000/- were paid towards expenses in violation of provisions of Section 40A(3) of the 1961 Act.

5. Now, the assessee is aggrieved by sustaining of additions of cash expenses to the tune of Rs. 37,92,591/- exceeding Rs. 20000/- in violation of Section 40A(3) by learned CIT(A) and the assessee has filed an appeal before the tribunal. The case of the assessee was fixed for hearing on 19.11.2018, wherein the Ld. Counsel for the assessee filed a letter before the tribunal and made a request for adjournment , which was granted by the Bench to the assessee and the appeal of the assessee was fixed for hearing on 20.11.2018. None appeared on behalf of the assessee on 20.11.2018 when the appeal was called for hearing before the Bench and the appeal was adjourned and fixed by tribunal for hearing on 19.12.2018 . When the appeal was again called for hearing before the Bench on 19.12.2018 , again none appeared on behalf of the assessee before the tribunal and the tribunal was again pleased to adjourn the hearing to 24.01.2019 . When again the appeal was called for hearing before the Bench on 24.01.2019 , none appeared on behalf of the assessee and tribunal was again pleased to grant one more opportunity to the assessee as a last opportunity and the appeal was adjourn for hearing to 11.03.2019. When this appeal was called for hearing on 11.03.2019, again none appeared on behalf of the assessee despite last opportunity granted to the assessee by the

Bench on last occasion when the appeal was fixed for hearing before the Bench on 24.01.2019. The Ld. DR on the other had strongly contended that both the authorities below have concurrently and conclusively held that the assessee had incurred cash expenses to the tune of Rs. 37,92,591/- which were in excess of Rs. 20,000/- and are hit by section 40A(3) of the 1961 Act. It was contended that keeping in view provision of section 40A(3) of the 1961 Act, addition/disallowance of cash expenses to the tune of Rs. 37,92,591/- made u/s. 40A(3) by the AO and as sustained by learned CIT(A) be confirmed. It was submitted that no reasons/justification of making cash payments in excess of Rs. 20000/- in violation of Section 40A(3) of the 1961 Act is submitted by the assessee and the same may be confirmed.

6. We have heard Ld. DR and carefully considered material on record . We have observed that the assessee is engaged in the business of Shipping, Logistics & freight forwarders. We have observed that the assessee had incurred cash expenditure totalling to Rs. 60,11,502/- . Out of these cash expenses, an amount of cash expenses totalling to Rs. 37,92,591/- were made in excess of Rs. 20,000/- in violation of Section 40A(3), the details for which are reproduced as hereunder:-

1.	Concor Delhi	65000
2.	Container Corporation of India Ltd.	27000
3.	Globelink WW India Pvt.Ltd.	26581
4.	Hub & Links Logistics India Pvt.Ltd.	82928
5.	Jay Container Services	58849
6.	Novel Sewing Machine Technologies	27081
7.	PJ Shanklesha Jewellers	250000
8.	Perumal Raj Bhoominath	41107
9.	Pinnacle Marine Service Pvt.Ltd.	30811
10.	Rani Softdrinks Pvt.Ltd.	175774
11.	Seagull Maritime Agencies Pvt.Ltd.	40549
12.	Emkay Lines Pvt.Ltd.	1498003
13.	Excellent Autocare Pvt.Ltd.	261179
14.	Jason Shipping Agency	225620
15.	Neptune Container Line Logistics Pvt.Ltd.	217670
16.	Ocean gate container Terminals P.Ltd.	274820
17.	Ravian Shipping Line LLC	274619
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19.	Confirmation - Amit Singh	165000
		3792591

The assessee did not produce books of accounts before the authorities below nor the assessee could produce invoices for these cash expenses. However, The assessee had produced self generated cash vouchers for these cash expenses. The assessee could not explain reasons and justification for making cash payment in excess of Rs. 20,000/- before the authorities below towards these expenses . The assessee has taken a stand before the authorities below that these expenses bear a small proportion to its turnover and hence the same should not be disallowed, which contention stood rejected by authorities below in view of infringement of Section 40A(3) of the 1961 Act. The assessee made bald statement that there is no infringement of Section 40A(3) as the expenses did not exceeded Rs. 20000/- but concurrently both the authorities rejected the said contention in view of lack of cogent evidences. Both the authorities below have come to the concurrent finding of fact that these cash payments towards expenses were in excess of Rs. 20,000/- which were hit by Section 40A(3) of the 1961 Act and hence the same stood disallowed. The assessee has also not filed any evidences before us to substantiate its stand that no disallowance u/s 40A(3) is warranted. No paper book has been filed by the assessee before us . Nor the assessee appeared before us despite several opportunities granted to the assessee by the

tribunal, the detail of which are given by us in preceding para's of this order. Keeping in view factual matrix of the case and material on record, we do not find any justification for interfering in the concurrent finding arrived at by both the AO as well learned CIT(A) that the assessee made cash payments towards expenses exceeding Rs. 20000/- in violation of Section 40A(3) of the 1961 Act. The assessee could not controvert and rebut the said finding of fact arrived at by both the authorities . Rather, before us the assessee has adopted an approach of not appearing before the tribunal. The litigants are supposed to be vigilant in pursuing their disputes before the Courts and in case of negligence and non-appearances/non co-operation before the Courts, the courts can proceed with and decide the matter based on material on record on merits. There are Special facts which are in the knowledge of the taxpayer and if these special facts/evidences which could be produced before the Court but are not produced/withheld by the taxpayer, the presumption can be drawn against the taxpayer that evidence if produced will be against the taxpayer . Reference is drawn to Section 114(g) of The Indian Evidence Act, 1872. In view of our detailed discussion and reasoning, we do not find any justification and merit in the appeal of the assessee which stand dismissed and the appellate order passed by learned CIT(A) stood confirmed/affirmed. We order accordingly.

7. In the result, appeal of the assessee in ITA no. 5117/Mum/2017 stand dismissed.

Order pronounced in the open court on 11.03.2019.

आदेश की घोषणा खुले न्यायालय में दिनांक: 11.03.2019 को की गई

Sd/-

(C.N. PRASAD)

JUDICIAL MEMBER

Sd/-

(RAMIT KOCHAR)

ACCOUNTANT MEMBER

Mumbai, dated: 11.03.2019

*Nishant Verma*  
*Sr. Private Secretary*

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

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BY ORDER  
DY/ASST. REGISTRAR  
ITAT, MUMBAI

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