(1994) 05 GAU CK 0005

In the Gauhati High Court

Case No : Income-tax Reference No. 28 of 1990

Associated Engineering Enterprise — APPELLANT

Vs

Commissioner of Income Tax — RESPONDENT

Date of Decision : 13-05-1994

Acts Referred:

Income Tax Act, 1961 — Section 40A, 40A(3)
Income Tax Rules, 1962 — Rule 6DD

Citation : (1994) 05 GAU CK 0005

Hon'ble Judges : V.D. Gyani, J;B.N. Singh, J

Bench : Division Bench

Advocate : A.K. Saraf and A.K. Sharma, for the Appellant; D.K. Talukdar, for the Respondent

Judgement

V.D. Gyani, J.—It is at the instance of the assessee that the following question has been referred by the Tribunal for this court''s opinion :

" Whether, on the facts and in the circumstances of the case and on a proper interpretation of Section 40A(3) of the Act, 1961, read with Rule 6DD(j) of the Income Tax Rules, 1962, the Appellate Tribunal was justified in law in holding that the disallowance by the Income Tax Officer in respect of the cash payments of Rs. 31,809 made on various dates to Rallis India Ltd. was proper ?"

2. A few basic facts leading to the reference may now be noted.

3. Certain cash payments amounting to Rs. 31,809 (as detailed below) made by the assessee to Rallis India Ltd. on different dates, were sought to be explained by the assessee who was called upon by the Income Tax Officer to explain as to what were the compelling circumstances which necessitated cash payments, in violation of Section 40A(3). The assessee in response thereto, while explaining the circumstances, submitted a confirmation letter (annexure-A/2) from Rallis India Ltd. which is reproduced below for ready reference :

" We, Rallis India Ltd., Engineering Division, Gauhati Depot, do hereby certify and confirm that on a number of occasions, Associated Engineering Enterprise, A. T. Road, Gauhati, was specially requested by us during the year ending March 31, 1982, to make us part payment in cash against our bills and cash memos, in order to enable us to meet urgent cash needs of our Gauhati Depot. Very often this becomes necessary for us when we do not receive the remittances in time from our Calcutta office. The details of bills and cash memos against which either part payment or full payment was received in cash during the year are given below :

Bill No. or C.M. No. Date of Bill/C.M Amount of Bill/C.M. Amount of payment received in cash Date of receipt

Rs. Rs.

WT/SP/G/2 30-4-81 16,143.16 3,000.00 8-6-81

4,143.16 17-6-81

WT/SP/G/14 16-7-81 22,926.56 5,000.00 22-7-81

5,000.00 27-7-81

WT/G/RW/35 18-8-81 2,661.00 2,661.00 2-11-81

WT/G/RW/6 IB-10-81 9,103.00 5,000.00 27-11-81

C. M. No. 219 1-10-81 2,608.00 2,608,00 1-10-81

C. M. No. 313 4-3-82 4,320.76

C. M. No. 314 4-3-82 76.40 4,397.16 4-3-82

Fol Rallis India Ltd. (Engineering Division), (Sd.) Gauhati Depot in-charge."

4. The details of payments, as quoted above, are omitted from the confirmation letter (annexure-A-2).

5. Dr. Saraf, learned counsel appearing for the assessee, contended that Messrs. Rallis India Ltd., the payee in the instant case, is a reputed concern from whom the assessee had made purchases to the tune of Rs. 5,09,275 during the assessment year, out of which payment of Rs. 31,809 was made in cash. The cash payments having been accepted by the payee, there was no scope, nor any reasonable ground to doubt the genuineness of the transactions effected by the assessee. In such circumstances, there could be no justification for disallowing the payments u/s 40A(3) of the Act.

6. Mr. Talukdar, learned counsel appearing for the Revenue, on the other hand, tracing the legislative history and object behind Section 40A(3) of the Act, and the Rules 6DD(j) highlighting the non obstante clause occurring therein, submitted that it was clearly indicative of the legislative intent not to encourage such cash payments, as it invariably led to tax evasion.

7. Placing reliance on a judgment of this court in Paul Brothers Vs. Commissioner of Income Tax, counsel for the assessee strenuously urged that so long as the payment made is genuine and the circumstances as enumerated under Clause (j) of Rule 6DD exist, the cash payments made by the assessee, should be allowed and held to be in accordance with law.

8. Clause (j) of Rule 6DD sets out the following four circumstances in which Sub-section (5) of Section 40A can be relaxed :

"(i) The purchaser is new to the seller ; or

(ii) The transactions are made at a place where either the purchaser or the seller does not have a bank account ; or

(iii) The transactions and payments are made on a bank holiday ; or

(iv) The seller is refusing to accept the payment by way of crossed cheque/draft and the purchaser''s business interest would suffer due to non-availability of goods otherwise than from this particular seller."

9. Learned standing counsel for the Revenue, referring to the above conditions, submitted that none of them either exists or is attracted to the facts as found in the case at hand. According to him, it is not the genuineness of the party or the transaction alone but the qualifying difficulty of the payee as spelt out from Clause (j) of Rule 6DD which is the determining fact. There is absolutely nothing on record, not even in the certificate produced by the assessee (annexure A-2) issued by Rallis India Ltd. as to what practical difficulty or unavoidable circumstance, much less an exceptional unavoidable circumstance posing genuine difficulty was there, which warranted cash payments, in violation of Sub-section (3) of Section 40A.

10. Adverting to Paul Brothers Vs. Commissioner of Income Tax, relied upon by learned counsel for the assessee, it turns on its peculiar facts as found and noted by the court (at page 359) :

" In the instant case, the five firms to whom payments were made, were all based at Gauhati. The assessee-firm is at Tezpur. Normally, the transactions are made ''through accounts''. But, in the above five instances, the representatives of the Gauhati firms ''came to Tezpur'' and ''insisted'' on cash payment (as in the Calcutta case). The assessee, therefore, had to pay in cash. This explanation was accepted by the Commissioner of Income Tax (Appeals) but not by the Income Tax Officer and the Tribunal. None of the three authorities have doubted the genuineness of these payments. Once the transactions are genuine, what is to be considered is only the explanation offered by the assessee."

11. In the instant case, both the assessee as well as the payee have their offices at Gauhati, admittedly with their bank accounts. It is not anybody''s case that cash payments had to be made on account of bank holiday that day. It is significant to note that even the certificate annexure A-2, issued by Rallis India

Ltd., is merely a certificate of having received the amounts in cash. It does not even remotely indicate any genuine difficulty posed or presented to the parties necessitating cash payments by the assessee on the dates they were made.

12. True it is, as has been observed in Paul Brothers Vs. Commissioner of Income Tax, that at times there is inordinate, inconceivable delay that occurs in the banking system prevailing in the country, delaying encashment of crossed cheques. The assessee in Paul Brothers Vs. Commissioner of Income Tax, had adduced on the point, whereas in the instant case except for the certificate annexure A-2, the assessee has failed to place any other material on record and in the absence of such material it cannot be said that the aforesaid cash payments made by the assessee were due to any exceptional or unavoidable circumstances as envisaged by Clause (j). Even if the certificate (annexure A-2) is ex facie taken as correct, yet it fails to fulfil the essential ingredients of Clause (j) which are not spelt out therefrom.

13. The other two cases relied upon by learned counsel for the assessee, Hasanand Pinjomal Vs. Commissioner of Incocme-tax, Gujarat, and Giridharilal Goenka Vs. Commissioner of Income Tax, a case of cash payments being made to two co-operative societies. Even in this case, the Gujarat High Court has pointed out (at page 145) :

" Be it noted that even if these four conditions are satisfied, the rigour of the rule contained in Sub-section (3) is not automatically relaxed. The assessee is still required to furnish evidence to the satisfaction of the Income Tax Officer as to the genuineness of the payment and the identity of the payee. It is only in such class of cases that the rule provides for no disallowance being made if any of the four conditions abovementioned is satisfied."

14. Thus, it is not merely the genuineness of the transaction but also the existence of the circumstances warranting payment by cash. In Giridharilal Goenka Vs. Commissioner of Income Tax, the Calcutta High Court while propounding the view that the Assessing Officer has to take into account the surrounding circumstances, considerations of the nature of business, its exigency and other related facts while exercising his discretion held that there cannot be an exhaustive list of such circumstances falling within the purview of Clause (j) of Rule 6DD which can be uniformly applied.

15. Lastly, attention was invited to Circular No. 220 dated May 31, 1977, issued by the Secretary, Central Board of Direct Taxes as published in [1977] 108 ITR 8. Of course, this circular is binding on the authorities as it provided a guideline, and paragraph 4 thereof enumerated the circumstances in which the conditions laid down in Rule 6DD(j) would be applicable. The crucial question is whether the very record and findings in the instant case in all these circumstances are spelt out, the Income Tax Officer as well as the Tribunal negate the contention advanced by the assessee.

16. In view of the foregoing discussion, the question as referred, is answered in

the affirmative, in favour of the Revenue and against the assessee.

