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**(1979) 10 P&H CK 0006**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Writ Petition No. 1009 of 1974**

Attar Singh Gurmukh Singh

APPELLANT

Vs

Income Tax Officer

RESPONDENT

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**Date of Decision :** 15-10-1979

**Acts Referred:**

Constitution of India, 1950 — Article 14  
Income Tax Act, 1961 — Section 40A(3)  
Income Tax Rules, 1962 — Rule 6DD

**Citation :** (1982) 136 ITR 589

**Hon'ble Judges :** S.S. Dewan, J; B.S. Dhillon, J

**Bench :** Division Bench

**Advocate :** T.S. Doabia, for the Appellant; D.N. Awasthy and B.N. Jhingan, for the Respondent

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## Judgement

B.S. Dhillon, J.—The petitioner in this petition under Articles 226/227 of the Constitution of India is a firm carrying on business of buying and selling electroplating material. The petitioner-firm submitted a return for the year 1971-72 before the ITO. The ITO asked the petitioner to show and furnish a list of items where purchases in excess of Rs. 2,500 were effected, otherwise than by crossed cheques. The copy of this notice is appended as annex. P-1 to this petition. In compliance with the above-mentioned notice, the petitioner produced the account books before the ITO, The notice, annex. P-1, pertains to the assessment years 1970-71 and 1971-72. Thereafter, the ITO issued another notice dated March 7, 1974 (annex. P-2), u/s 143(3) of the I.T. Act, 1961 (hereinafter referred to as "the Act"), stating therein that the assessee having been requested to file the details of items of cash purchases above Rs. 2,500 as per his ledgers and the said details having not been filed, it was pointed out that purchases to the tune of Rs. 3,70,344 representing items above Rs. 2,500 were effected during that year which are also unvouched. He expressed the opinion that the said purchases were inadmissible items of deduction under the provisions of Section 40A(3) of the Act. The notice said that the ITO proposed to

disallow the same and, with a view to allow an opportunity to the petitioner, he was asked to appear before the ITO. At this stage, the petitioner filed the present writ petition, challenging the aforesaid notice dated March 7, 1974, mainly on the ground that the provisions of Section 40A(3) of the Act are ultra vires.

2. The provisions of Section 40A(3) of the Act are as follows :

"40A. (3) Where the assessee incurs any expenditure in respect of which payment is made, after such date (not being later than the 31st day of March, 1969) as may be specified in this behalf by the Central Government by notification in the Official Gazette, in a sum exceeding two thousand five hundred rupees otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft, such expenditure shall not be allowed as a deduction :

Provided that where an allowance has been made in the assessment for any year not being an assessment year commencing prior to the 1st day of April, 1969, in respect of any liability incurred by the assessee for any expenditure and subsequently during any previous year the assessee makes any payment in respect thereof in a sum exceeding two thousand five hundred rupees otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft, the allowance originally made shall be deemed to have been wrongly made and the Income Tax Officer may recompute the total income of the assessee for the previous year in which such liability was incurred and make the necessary amendment, and the provisions of Section 154 shall, so far as may be, apply thereto, the period of four years specified in Sub-section (7) of that section being reckoned from the end of the assessment year next following the previous year in which the payment was so made:

Provided further that no disallowance under this Sub-section shall be made where any payment in a sum exceeding two thousand five hundred rupees is made otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft, in such cases and under such circumstances as may be prescribed, having regard to the nature and extent of banking facilities available, considerations of business expediency and other relevant factors."

3. As is clear from the second proviso to Section 40A(3) of the Act, Rules have been framed providing for such circumstances so as not to allow disallowance under this Sub-section where any payment in a sum exceeding two thousand five hundred rupees is made otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft. Consequently, in pursuance of the power referred to above, Rule 6DD of the I.T. Rules, 1962 (hereinafter referred to as "the Rules"), has been framed. This rule has a number of Clauses (a) to (j). Rule 6DD of the Rules is as follows:

"6DD. No disallowance under Sub-section (3) of Section 40A shall be made where any payment in a sum exceeding two thousand five hundred rupees is made otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft in the cases and circumstances specified hereunder, namely:--

(a) where the payment is made to-

(i) the Reserve Bank of India or any banking company as defined in Clause (c) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949);

(ii) the State Bank of India or any subsidiary bank as defined in Section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959);

(iii) any co-operative bank or land mortgage bank ;

(iv) any primary agricultural credit society as defined in Clause (cii) of Section 2 of the Reserve Bank of India Act, 1934 (2 of 1934), or any primary credit society as defined in Clause (civ) of that section ;

(v) the Life Insurance Corporation of India established u/s 3 of the Life Insurance Corporation Act, 1956 (31 of 1956);

(vi) the Industrial Finance Corporation of India established u/s 3 of the Industrial Finance Corporation Act, 1948 (15 of 1948);

(vii) the Industrial Credit and Investment Corporation of India Ltd.;

(viii) the Industrial Development Bank of India established u/s 3 of the Industrial Development Bank of India Act, 1964 (18 of 1964);

(ix) the Unit Trust of India established u/s 3 of the Unit Trust of India Act, 1963 (52 of 1963);

(x) the Madras Industrial Investment Corporation Ltd., Madras ; (xi) the Andhra Pradesh Industrial Development Corporation Ltd., Hyderabad;

(xii) the Kerala State Industrial Development Corporation Ltd., Trivandrum;

(xiii) the State Industrial and Investment Corporation of Maharashtra Ltd., Bombay;

(xiv) the Punjab State Industrial Development Corporation Ltd., Chandigarh ;

(xv) the National Industrial Development Corporation Ltd., New Delhi;

(xvi) the Mysore State Industrial Investment and Development Corporation Ltd., Bangalore;

(xvii) the Haryana State Industrial Development Corporation Ltd., Chandigarh;

(xviii) any State Financial Corporation established u/s 3 of the State Financial Corporations Act, 1951 (63 of 1951);

(b) where the payment is made to Government and, under the rules framed by it, such payment is required to be made in legal tender;

(c) where under any contract entered into by the assessee before the 1st day of April, 1969, the payment is required to be made in legal tender ;

(d) where the payment is made by-

(i) any letter of credit arrangements through a bank ;

(ii) a mail or telegraphic transfer through a bank;

(iii) a book adjustment from any account in a bank to any other account in that or any other bank ;

(iv) a bill of exchange made payable only to a bank. Explanation.---For the purposes of this clause and Clause (h), the term "bank" means any bank, banking company, or society referred to in sub-Clauses (i) to (iv) of Clause (a) and includes any bank [not being a banking company as denned in Clause (c) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949)], whether incorporated or not, which is established outside India;

(e) where the payment is made by way of adjustment against the amount of any liability incurred by the payee for any goods supplied or services rendered by the assessee to such payee ;

(f) where the payment is made for the purchase of-

(i) agricultural or forest produce; or

(ii) the produce of animal husbandry (including hides and skins) or dairy or poultry farming ; or

(iii) fish or fish products ; or

(iv) the products of horticulture or apiculture,

to the cultivator, grower or producer of such articles, produce or products ;

(g) where the payment is made for the purchase of the products manufactured or processed without the aid of power in a cottage industry, to the producer of such products ;

(h) where the payment is made in a village or town, which on the date of such payment is not served by any bank, to any person who ordinarily resides, or is carrying on any business, profession or vocation, in any such village or town ;

(i) where any payment by way of gratuity, retrenchment compensation or similar terminal benefit, is made to an employee of the assessee or the heirs of any such employee on or in connection with the retrenchment, resignation, discharge or death of such employee, if the income chargeable under the head "Salaries" of the employee in respect of the financial year in which such retirement, resignation, discharge or death took place or the immediately preceding financial year did not exceed Rs. 7,500;

(j) in any other case, where the assessee satisfies the Income Tax Officer that the payment could not be made by a crossed cheque drawn on a bank or by a crossed bank draft-

(1) due to exceptional or unavoidable circumstances ; or

(2) because payment in the manner aforesaid was not practicable, or would have caused genuine difficulty to the payee, having regard to the nature of the transaction and the necessity for expeditious settlement thereof,

and also furnishes evidence to the satisfaction of the Income Tax Officer as to the genuineness of the payment and the identity of the payee."

4. The only contention raised by Mr. Doabia, learned counsel" for the petitioner, is that the provisions of Section 40A(3) of the Act are ultra vires as the same are arbitrary. It has been contended that the assessee is engaged in the business of buying and selling electroplating material. In the course of business he has to purchase certain material. The income of the assessee will be the difference between the price of the purchased material and the price at which the same is sold. It has been contended that if the price of the purchased material is not adjusted as against the sale price of the material so sold, in that case the Income Tax levied will not be on the income, rather it will be arbitrarily levied on an assumed income. We are unable to agree with this contention of the learned counsel. Taking into consideration the language of Section 40A(3) of the Act and Rule 6DD of the Rules, we are of the opinion that the said provision is more a rule of procedure, rather than creating any substantial hindrance in the way of an assessee who wants to have deduction on the genuine purchase transactions. The provisions of Sub-rule (j) of Rule 6DD of the Rules may specially be referred to in this regard. The said rule in fact provides for all eventualities which may occur due to exceptional or unavoidable circumstances, or because payment in the manner as provided in Section 40A(3) of the Act was not practicable or would have caused genuine difficulty to the payee having regard to the nature of the transaction and the necessity of expeditious settlement thereof. The said provision has been made to safeguard the revenues of the State and if the measures are taken to check the evasion of Income Tax, it cannot be said the said measure taken is ultra vires on the ground of arbitrariness and violative of Article 14 of the Constitution. The said provision, in our view, has been introduced only to regulate the business activities and prevent unaccounted money being used for clandestine transactions and it was in the interest of revenue and national economy that the restriction imposed in this provision has been enacted. This provision in no way can be held to curtail the freedom of trade or business. As already observed, the said provision is more of a procedure than to be of taking away any right of an assessee and the said procedure has been prescribed with a view to avoid evasion of tax to which the revenue legitimately is entitled. The provision, therefore, cannot be in any manner termed to be arbitrary. The vires of this provision were upheld by the Andhra Pradesh High Court in *Mudiam Oil Co. and Others Vs. Income Tax Officer and Others*, . No other ground has been pressed.

5. For the reasons recorded above, we are clearly of the opinion that the provisions of Section 40A(3) of the Act are not ultra vires.

6. As regards the notice dated March 7, 1974 (annex. P-2), it is for the assessee to go and satisfy the authority concerned that he is entitled to claim any of the exceptions as provided for in Rule 6DD of the Rules, referred to above. It, of course, goes without saying that the assessee will be afforded an opportunity as has also been stated in the notice to satisfy the authority concerned that he is entitled to the deduction of the expenditure claimed in view of the provisions of the rule referred to above. The concerned authority being satisfied, the assessee will be entitled to the relief.

7. For the reasons recorded above, there is no merit in this petition and the same is hereby dismissed. The authority concerned shall proceed further to process the case in accordance with law. However, there will be no order as to costs.

S.S. Dewan, J.

8. I agree.