

(2004) 05 P&H CK 0039
In the Punjab And Haryana At Chandigarh
Case No : Income-tax Appeal No. 186 of 2002

Commissioner of Income Tax

APPELLANT

Vs

Amarjit Arora

RESPONDENT

Date of Decision : 11-05-2004

Acts Referred:

Income Tax Act, 1961 — Section 260A, 40A
Income Tax Rules, 1962 — Rule 6DD

Citation : (2004) 271 ITR 212

Hon'ble Judges : S.S. Grewal, J;N.K. Sud, J

Bench : Division Bench

Advocate : R.P. Sawhney and A.S. Tewatia, for the Appellant;

Final Decision : Dismissed

Judgement

N.K. Sud, J.—The Revenue has filed this appeal u/s 260A of the Income Tax Act, 1961 (for short "the Act"), against the order of the Income Tax Appellate Tribunal, Chandigarh Bench-A, Chandigarh (for short the "Tribunal"), dated April 24, 2002, whereby its appeal against the order of the Commissioner of Income Tax (Appeals) for the assessment year 1993-94 has been dismissed.

2. During the course of assessment proceedings, the Assessing Officer noticed that the assessee had made purchases against cash payments from one M/s. Sawan Plastics to the tune of Rs. 3,55,490 vide nine bills of different dates. This, according to the Assessing Officer, was in violation of the provisions of section 40A(3) of the Act for which explanation of the assessee was sought. The assessee explained that the payments had been made in cash at the insistence of the seller who had issued certain cheques to its supplier and needed the cash for depositing in the bank so that the cheques may be passed. It was also explained that the goods were supplied at lower rates against cash payments than credit purchase. Confirmation from the supplier was filed to the effect that it had insisted for cash payment since the assessee on earlier occasions had failed to make payment in time. The Assessing Officer rejected this explanation by

observing that M/s. Sawan Plastics was having a number of other customers and as such it could have got the payments from some other parties. Accordingly, he made the addition of Rs. 3,55,490 to the income of the assessee on account of violation of the provisions of section 40A(3) of the Act.

3. The assessee preferred an appeal before the Commissioner of Income Tax (Appeals) which was allowed vide order dated September 26, 1996. It was held by the Commissioner of Income Tax (Appeals) that the assessee's case fell under the exceptions provided in rule 6DD(j) of the Income Tax Rules as the cash payments had been made on the insistence of the seller and this claim of the assessee was supported by the confirmatory letter issued by the seller. These findings have been confirmed by the Tribunal in the Revenue's appeal against the order of the Commissioner of Income Tax (Appeals) vide the impugned order dated April 24, 2002.

4. Counsel for the appellant contended that the Commissioner of Income Tax (Appeals) as well as the Tribunal had erred in holding that the case of the assessee was covered by the exceptions provided under rule 6DD(j). He pointed out that the assessee had given different explanations on different occasions and as such was not entitled to the benefit of the said rule. We are unable to accept this contention. The categorical stand of the assessee was that he had made the payments in cash on the insistence of the seller and if he had not acceded to this request, the supply of goods to it could have been terminated as the payment schedule of the assessee had gone beyond the relaxation period of 15 days. The supplier had also confirmed that it had insisted on cash payment since the assessee, on earlier occasions, had failed to make the payment in time. This situation stands covered under the exceptions provided in Rule 6DD(j) read with Circular No. 220, dated May 31, 1977, issued by the Central Board of Direct Taxes (reported in [1977] 108 ITR 8).

5. Similar issue had come up for consideration before this court in Commissioner of Income Tax Vs. Nikko Auto Ltd., , wherein it was observed as under (page 479) :

"What constitutes an exceptional and unavoidable circumstance ? This question became a subject-matter of controversy giving rise to protracted litigation. The courts have been consistent in their view that the exceptional circumstances are to be seen from the point of view of a businessman keeping in view the exigencies of business. Still further, the Central Board of Direct Taxes itself has issued Circular No. 220, dated May 31, 1977 (reported in [1977] 108 ITR 8), illustrating the circumstances in which residuary exceptions of Rule 6DD(j) are attracted. One of the circumstances mentioned by the Board is that the seller is refusing to accept the payment by way of crossed cheque or a draft. Para. 4 of this circular provides that the requirement of Rule 6DD(j) would stand satisfied if a letter is produced by an assessee in respect of each transaction falling within the categories mentioned in the said circular giving full particulars of his address, sales tax registration number, if any, for the purpose of proper identification to

enable the Income Tax Officer to satisfy himself about the genuineness of the transaction. It is, therefore, evident that section 40A(3) has been enacted to check the flow of black money and is basically directed towards the transactions which cannot be cross checked and cross verified."

6. We are, therefore, satisfied that the transactions of cash payments in the present case are protected by the exceptions provided under rule 6DD(j) read with circular dated May 31, 1977. Even otherwise there is no dispute about the genuineness of the transactions and the ratio of the decision of this court in Commissioner of Income Tax Vs. Avtar Singh and Sons, also supports the case of the assessee.

7. In view of the above, we are of the view that no substantial question of law arises out of the order of the Tribunal. According, the appeal is dismissed in limine.