

(2002) 10 KL CK 0032
In the High Court Of Kerala
Case No : Income Tax R. No. 85 of 2000

Commissioner of Income Tax

APPELLANT

Vs

Eastern Condiments Pvt. Ltd.

RESPONDENT

Date of Decision : 17-10-2002

Acts Referred:

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

Citation : (2003) 181 CTR 483 : (2003) 129 TAXMAN 379

Hon'ble Judges : K. Balakrishnan Nair, J;G. Sivarajan, J

Bench : Division Bench

Advocate : P.K.R. Menon and George K. George, for the Appellant; P. Balachandran, for the Respondent

Final Decision : Dismissed

Judgement

G. Sivarajan, J.—This appeal is filed by the Commissioner of Income Tax, Central-I, Chennai, challenging the order of the Income Tax Appellate Tribunal, Cochin Bench, in I. T. A. No. 83 (Cochin) of 1996. The matter arises under the Income Tax Act, 1961 (for short "the Act"). The assessment year concerned is 1992-93. The respondent-assesses is engaged in the manufacture and sale of various spices. The raw materials for the manufacture of the said products are mainly chilly, corriander, turmeric, etc. The appellant purchased those raw materials from various markets in the State of Tamil Nadu by paying the price in cash.

2. The respondent-assessee started this business during the financial year 1990-91. For the assessment year 1992-93, the relevant accounting period ended on March 31, 1992, the assessee filed a return on December 30, 1992, disclosing a net income of Rs. 1,54,668. In the audit report accompanying the return it was recorded that certain items were listed as cash purchases exceeding Rs. 10,000. The assessing authority sought for an explanation from the assessee regarding such cash payments. The assessee filed a written explanation on March 10, 1995, wherein it is stated that the business was started only in

1990-91, that the turnover for that year was Rs. 2,91,148, that during the financial year 1991-92, the turnover increased to Rs. 1,40,71,274, that all the raw materials are agricultural produce, that the goods were procured through agents and that the suppliers were all new and they were not prepared to accept cheques. It is also stated that all the purchases are supported by bills. The assessing authority, however, relying on the provisions of Section 40A(3) of the Act read with Rule 6DD(j) of the Income Tax Rules disallowed an amount of Rs. 46,32,449 from the expenditure incurred. The assessee took up the matter in appeal before the Commissioner of Income Tax (Appeals), Cochin, who by order dated November 14, 1995, deleted the disallowance made u/s 40A(3) of the Act. The Department took up the matter in appeal before the Tribunal and the Tribunal after due consideration of all relevant matters confirmed the order of the Commissioner of Income Tax (Appeals), Cochin.

3. Shri P. K. R. Menon, learned senior Central Government standing counsel appearing for the appellant, submits that the assessing authority was perfectly justified in disallowing the deduction of expenditure to the tune of Rs. 46,32,449 incurred by the assessee for the purchase of the raw materials from parties outside the State by making cash payment. The senior counsel submits that u/s 40A(3) of the Act read with Rule 6DD(j) of the Rules though the assessing authority has the discretion to allow such expenditure under the circumstances specified in the Rules, the assessee is bound to explain the circumstances specified in Sub-rules (1) and (2) of Rule 6DD(j) and it is only on being satisfied of the explanation so made, the expenditure can be allowed. The senior counsel also pointed out that the assessee had not established a case by adducing evidence to the effect that the purchasers refused to receive cheques and that the assessee was compelled to pay cash for the raw materials purchased.

4. We have also heard Shri P. Balachandran, learned counsel appearing for the respondent-assessee. He submits that the assessee had started this business only during the financial year 1990-91 and that the sellers of raw materials outside the State were not prepared to receive cheques towards consideration for the sale of raw materials. He further submits that the assessee had procured the raw materials through agents who are lorry drivers and that the sellers were not prepared to accept cheques to be issued by the assessee. Counsel further submitted that the entire purchases so made are supported by bills, that the check post authorities had verified the same and that the Assessing Officer had not doubted the genuineness of the transactions. He accordingly submitted that the Commissioner of Income Tax (Appeals) and the Tribunal were perfectly justified in accepting the explanation of the appellant and in directing deletion of the disallowance made by the assessing authority.

5. We have considered the rival submissions and also perused the orders of the Tribunal and the authorities below. The assessee had offered an explanation to the effect that they have started the business only during the financial year 1991 and that since the suppliers were new, they were not prepared to accept the

cheques and the appellant was perforced to make cash payments for such purchases. The assessing authority had observed that there is no evidence in support of the claim that the sellers of raw materials insisted on cash and that cash receipts also do not in any way indicate that the sellers insisted on cash payments. The first appellate authority has observed that, on verification of the accounts, it was found that these raw materials were purchased by payment in cash to the extent of Rs. 46,32,449. The appellate authority also noted that earlier, the matter was remanded to the assessing authority for a report and the assessing authority in the report has stated that all the purchases were found to be genuine and that the items listed in annexure I to the audit report in Form No. 3CD are supported by regular bills. It is in the above circumstances, the appellate authority has directed deletion of the disallowance made u/s 40A(3) of the Act. The Tribunal after referring to the provisions of Rule 6DD(j) of the Rules observed that it cannot be said in the circumstances that Rule 6DD(j) has not been satisfied in the assessee's case. The Tribunal further observed that having regard to the nature of the transactions, it was necessary to have expeditious settlement as otherwise the delay would have caused difficulty to the assessee by not getting the goods and that the genuineness of the payments is not doubted. The Tribunal also noted that the assessee purchased the goods from the markets in various places of Tamil Nadu and that it is not disputed that the payments were properly vouched and there were no bogus transactions in the year. The Tribunal further noted that in the case, viz., P. M. Abdul Razak v. ITO [1997] 63 ITR 398 the Cochin Bench of the Tribunal held that since the Assessing Officer did not doubt the genuineness of the cash payments nor had he alleged anything of making false claim of cash payments, the disallowance could not be made. According to the Tribunal the facts of the present case are similar to the facts of the decided case. The Tribunal in the above circumstances upheld the order of the Commissioner of Income Tax (Appeals), Cochin. In this case, the remand report sent by the assessing authority to the Commissioner of Income Tax (Appeals) reads as follows :

"As directed, the bills and sales tax documents relating to the purchases detailed in annexure I to the audit report in Form No. 3CD were called for and examined. It is noticed that all the items purchased are agricultural produce like, chillies, turmeric, corriander, etc. All the items listed in the annexure are supported by regular bills. All the bills bear the stamp of the sales tax check post. All the purchases in the list are thus found to be genuine".

6. As already noted, the assessee from the very beginning has been stating that the business was started only in 1991 and since the purchases of raw materials were being made through agents, the suppliers were not prepared to accept cash payments. As per the provisions of Rule 6DD(j) where the assessee satisfies the Assessing Officer that the payment could not be made by a crossed cheque drawn on a bank or by a crossed bank draft due to exceptional or unavoidable circumstances or 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 Assessing Officer as to the genuineness of the payment and the identity of the payee the assessing authority has got discretion to allow the expenditure. The instant case squarely falls under Sub-rule (2) of Rule 6DD(j) of the Income Tax Rules. The assessee had clearly stated that it was not practicable for effecting payments by crossed cheques to the suppliers for the reason that the suppliers are new and that the purchases are effected through lorry drivers. The remand report of the assessing authority clearly shows that all the transactions are supported by regular bills and all those bills bear the stamp of the sales tax check post. The assessing authority in fact wanted evidence from the assessee's suppliers that they had refused to receive cheques and that payments should be made in cash.

7. According to us, nothing will turn out by obtaining a letter from the suppliers to the effect that they are not prepared to accept cheques. It is a matter for inferences" to be drawn from the facts and circumstances of each case. Having regard to the fact that the assessee had started the business only during the financial year 1990-91, that the assessee has clearly stated that the suppliers were not inclined to receive payment by cheque and the further fact that the Assessing Officer had observed that all the purchases are genuine, we are of the view that the two appellate authorities are justified in holding that the assessee had satisfied the provisions of Rule 6DD(j) of the Rules and in allowing the claim for deduction of expenditure. The conclusion arrived at by the appellate authorities cannot be characterised as unreasonable or perverse. We have considered the case only with reference to the factual situation obtaining so far as the assessment year 1992-93 is concerned and it may not be understood as a precedent for the future years of assessment.

8. We accordingly dismiss this appeal with the above observations.