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(2006) 10 AHC CK 0226

In the Allahabad High Court

Commissioner of Income Tax — APPELLANT

Vs

Sapna Traders — RESPONDENT

Date of Decision : 26-10-2006

Acts Referred:
Income Tax Act, 1961 — Section 256(1)

Citation : (2006) 10 AHC CK 0226

Hon'ble Judges : Vikram Nath, J;R.K. Agrawal, J

Bench : Division Bench

Judgement

1. The Income Tax Appellate Tribunal, Allahabad Bench, has referred the following question of law u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as the Act), for opinion to this Court:

Whether on the facts and legal position of the case, the Hon''ble Tribunal was justified in holding that the cash payment exceeding Rs. 2,500 made by the assessee amounting to Rs. 44,000 were not disallowable u/s 40A(3)?

The reference relates to year 1987-88.

2. Briefly stated the facts giving rise to the present reference are as follows:

The assessee is a registered firm and deals in agency sale of Ashok Masala, Match Box and Kirana business both on wholesale and retail basis. Assessment for the assessment year 1987-88, i.e., the year under consideration was framed u/s 143(3) on 30-11-1988. While scrutinising the accounts, the assessing officer found that the payments amounting to Rs. 44,000 had been made to 7 parties which in individual case exceeded the amount of Rs. 2,500 in cash. On inquiry the assessee failed to give out the special circumstances for the cash payment which could be covered by the provisions of rule 6DD(j) of Income Tax Rules. Consequently, the cash payment amounted to violation of rule 40A(3) and the Income Tax Officer disallowed the payment of the said amount and added the same as income u/s 40A(3). In appeal filed by the assessee the said disallowance was confirmed by the learned CIT (Appeals) discussing the whole

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issue in paragraph 7 of his order which runs as under:

I have considered the facts, M/s. Om Match Co. cannot be said to be a new company to the assessee. Nor it could be said that it was the precondition for making the payment in cash. There was an agreement between the appellant and M/s. D.K. Sons that the goods will be supplied to the appellant through U.P. Distributor M/s. Om Match Co., Jhansi. That the goods will be supplied for six months on 50 per cent payment should be paid while placing next order. This does not indicate that the payment was required to be made in cash. The-provisions of Section 40A(3) are special provisions which should override the general provisions. General concept is that the payment is genuine then the deduction should be allowed. The provisions of Section 40A(3) have been brought into check the fictitious or bogus claim through these override provisions. Special provisions always override the general provisions. If there was no identity of the purchaser and purchaser was not genuine then the deduction should not have been allowed otherwise also. Therefore, in my view even if the purchasers are genuine and identity is established and if there is a violation of the provisions of Section 40A(3), the addition can be made unless it is covered under the exceptions of provisions of rule 6DD(j) and, therefore, I hold that the addition made is fully justified and is confirmed.

3. The assessee, being aggrieved, filed second appeal before the Tribunal. The Tribunal vide its order dated 14-3-1991 deleted the said addition on the ground that the payments were made as the supplier insisted on cash payment and because of business exigency the said payment was made in cash and consequently the alleged payment did not attract the provisions of Section 40A(3).

4. We have heard Shri A.N. Mahajan, learned Counsel for the revenue and Shri Pawan Shree Agarwal for the respondent-assessee.

5. Shri A.N. Mahajan, learned Counsel for the revenue, has urged that as the assessee had failed to establish the special circumstances for making such payment in cash, the Tribunal had erred in deleting the addition.

6. On the other hand, Shri Pawan Shree Agarwal, learned Counsel for the respondent-assessee, has urged that specific finding had been recorded by the Tribunal that the supplier, i.e., M/s. Om Match Company had insisted in writing for the payments to be made in cash against the bills as the assessee was a new firm, and, therefore, the assessee had made the payments and was covered by the exception clause as provided under the Rules and squarely covered by Clause (?) of rule 6DD. He has further relied upon the following two decisions:

(1) Commissioner of Income Tax Vs. Ram Agya Shyam Narain,

(2) Commissioner of Income Tax Vs. Narang Ram Chiranji Lal,

7. We have considered the rival submissions. In the present case, we find that the cash transactions have been found to be genuine and also exceptional for the

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reason that the assessee-firm was a new firm and in order to establish its business had to concede to the request of the suppliers. Further in the case of Ram Agya Shyam Narain (supra), we find that the Division Bench of this Court while dealing with the similar situation was of the view that where the payments made are genuine, such cash transactions should be allowed to be deducted. It further held that if the Tribunal based upon the material on record arrived at a conclusion that the deductions be allowed, then the same would be a finding of fact and would not require to be interfered with. The relevant portion of the judgment in the case of Ram Agya Shyam Narain (supra) reads as follows:

Section 40A(3) provides that if any payment over and above Rs. 2,500 is made otherwise than by a crossed cheque or by a crossed bank draft, it. shall not be allowed as a deduction. This bar applies to all and any expenditure incurred by the assessee. However, the second proviso to that sub-section says that no such disallowance shall be made if the payment is made in the circumstances as may be prescribed by the Rules. Rule 6DD has been framed in pursuance of this proviso. One of the situations where the disallowance will not be made is specified in Clause (8) which reads as follows:

(j) in any other case, where the assessee satisfied the assessing 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 assessing officer as to the genuineness of the payment and the identity of the payee.''

The Tribunal has found that the identity of the payee is established as also the genuineness of the payment. That was indeed the finding of the Appellate Assistant Commissioner of Income Tax. The only question was whether the assessee has established that the payment in cash was made in exceptional or unavoidable circumstances or for the reasons specified in Sub-clause (2) of Clause (f). The Tribunal has found that the amount paid in cash is quite small compared to the total amount involved in the transaction between the assessee and Shyam Fabrics and it also found that the payee insisted upon cash payment and, with a view to maintain good relations, the assessee made payment in cash. This is a finding of fact and we see no reason to disturb the said finding in this reference.

8. Similar view has been taken in the case of Narang Ram. Chirangi Lal (supra).

9. Respectfully following the aforesaid decisions, we do not find any error in the findings of the Tribunal and accordingly answer the question referred to us in the affirmative, that is, in favour of the assessee and against the revenue.

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10. There shall be no order as to costs.

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