

(1983) 01 AHC CK 0050

In the Allahabad High Court

Case No : Income-tax Reference No. 346 of 1980

Commissioner of Income Tax

APPELLANT

Vs

Satish Chandra

RESPONDENT

Date of Decision : 10-01-1983

Acts Referred:

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

Citation : (1983) 34 CTR 321 : (1983) 143 ITR 330 : (1983) 13 TAXMAN 225

Hon'ble Judges : V.K. Mehrotra, J; R.M. Sahai, J

Bench : Division Bench

Advocate : M. Katju, for the Appellant; K.B. Jindal, for the Respondent

Final Decision : Allowed

Judgement

R.M. Sahat, J.—On the direction of this court the Income Tax Appellate Tribunal, Delhi Bench "B", has submitted the following question of law for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in deleting the addition of Rs. 15,590 made by the Income Tax Officer u/s 40A(3) of the Income Tax Act, 1961 ?"

2. Facts in brief, giving rise to this reference, are that the assessee, an individual, derived income from sale of paper, stationery, copies, etc. In the course of assessment proceedings, the ITO found that four payments in cash beyond Rs. 2,500 were made. As the assessee failed to explain the circumstances in which these payments were not made either by crossed cheque or bank draft, the ITO disallowed it u/s 40A(3) and added these in his income. In the appeal before AAC the assessee filed certificates from the suppliers stating that they were not willing to accept cheque. The appellate authority, however, did not place any reliance on these certificates as they were not filed before the ITO. Further, the certificates were found to be vague and of a routine nature. This

finding was recorded by the appellate authority although he. did not disbelieve that one of the suppliers, M/s. Agrawal and Company, did not have any bank account. In further appeal, the Tribunal went into the details and after examining each certificate was of opinion that the case of the assessee fell within the four corners of Rule 6DD and the circular issued by the Board.

3. It has been argued on behalf of the Commissioner that the AAC could not have accepted the additional evidence. We, however, do not think that we are called upon to decide this controversy as the argument raised by the learned counsel was neither raised before the AAC or before the Tribunal nor any question was called on it.

4. It was then urged that according to Circular No. 220 issued by the Govt. of India the burden was on the assessee to establish exceptional or unavoidable circumstance. According to him, the certificates issued by the suppliers did not establish any such circumstance and the Tribunal committed an error in granting relief to the assessee. We do not find any merit in this submission. Primarily, it is a question of fact. The Tribunal has examined each certificate and found the circumstances in which the payment was made in cash instead of by cheques. Apart from it, we have ourselves examined the certificates and we do not find any vagueness of a routine nature in it. The Tribunal did not, in our opinion, commit any error in accepting it.

5. Attention was drawn to a certificate issued by the Rastriya Block Works, Bartan Bazar, Moradabad, dated 15th August, 1977, and it was urged that at least there was no reason to accept the explanation given by the assessee in respect of this transaction. This certificate was also examined by the Tribunal and it found that cash payment had to be made by the assessee because it did not retire the railway receipt through the Bank of Baroda and thereafter it was sent by the supplier to its distributor who retired the same and delivered the goods against cash payment. It is true that in this case the exceptional circumstances arose because of the assessee's own conduct in not retiring the RRs. but the Tribunal having believed it as an exceptional circumstance under Rule 6DD, we do not think we would be justified in interfering with the finding.

6. For the reasons stated above the question of law referred to us is answered in the affirmative, in favour of the assessee and against the Department. The assessee shall be entitled to its costs which are assessed at Rs. 250.