

(2012) 06 MAD CK 0209

In the Madras High Court

Case No : Tax Case (Appeal) No's. 122 of 2003 and 1430 and 1431 of 2005

Commissioner of Income Tax

APPELLANT

Vs

Venkatadhri Constructions

RESPONDENT

Date of Decision : 29-06-2012

Acts Referred:

Income Tax Act, 1961 — Section 40A, 40A(3)

Citation : (2013) 255 CTR 385

Hon'ble Judges : K. Ravichandra Baabu, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : T.R. Senthil Kumar, for the Appellant; V.S. Jayakumar, for the Respondent

Final Decision : Allowed

Judgement

Chitra Venkataraman, J.—The Revenue has filed the above appeals as against the order of the Tribunal for the asst. yrs. 1993-94 and 1995-96. The Tax Case (Appeal) No. 122 of 2003 was admitted on the following substantial question of law:

Whether in the facts and circumstances of the case, the Tribunal was right in holding that payment of cash amounting to Rs. 3,80,083 by the assessee to the supplier's bank account is not a violation of the provisions of s. 40A(3) ?

The Tax Case (Appeal) Nos. 1430 and 1431 of 2005 were admitted on the following substantial question of law:

Whether in the facts and circumstances of the case, the Tribunal was right in holding that payment of cash amounting to Rs. 3,14,600 by the assessee to the supplier's bank account is not a violation of the provisions of s. 40A(3)?

The assessee herein admittedly made cash payment exceeding Rs. 10,000 in respect of certain business expenditure incurred by him. On the proposal to apply s, 40A(3) of the IT Act, the assessee furnished the details which are

extracted in the assessment order itself. The assessee contended that the payee was having regular accounts with the assessee as regards the supply of cement and that in some of the cases, cash payments were deposited by the assessee directly into the account of the supplier. Apart from this, the assessee also pointed out to the payment to labour. Thus, on a consideration of the facts, the assessing authority granted the relief in respect of those cases where payment in cash was made. However, as regards the payment made by way of advance for purchase of cement and credited to the account of the vendor, the assessing authority rejected the assessee's plea. Thus, out of cash payment of Rs. 4,44,803, the assessing authority held that a sum of Rs. 64,720 alone would not fall for consideration under s. 40A(3) of the Act and balance sum of Rs. 3,80,083 was liable to be disallowed under s. 40A(3) of the Act. The facts thus stated above related to asst. yr. 1993-94. Aggrieved by this, the assessee went on appeal before the CIT(A), who accepted the assessee's plea that since the amount of Rs. 3,26,813 was directly paid into the account, the same was not liable to be considered as covered by s. 40A(3) for disallowance. The CIT(A) also granted further relief on payment of Rs. 25,000 and odd. Thus, partly allowed the appeal.

2. Aggrieved by this, the Revenue went on appeal before the Tribunal, who confirmed the assessee's case in a single line that after hearing the parties and on going through the order of the CIT(A), the order could not be found fault with. We may record herein that absolutely there is no recording of the reasons independently by the Tribunal as a fact finding body by considering the provisions under s. 40A(3) of the Act to the facts of the case. Aggrieved by the view of the Tribunal, the Revenue has come on appeal before this Court.

3. Sec. 40A(3) as it existed relevant to the assessment year under consideration reads thus:

Sec. 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 ten thousand 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...

Provided further that no disallowance under this sub-section shall be made where any payment in a sum exceeding ten thousand 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.

4. A reading of the abovesaid section would point out that whenever the assessee incurred expenditure in respect of which payment is made in cash in

excess of Rs. 10,000, the expenditure should not be allowed as a deduction. The proviso to sub-s.. (3) of s. 40A carries out the exception that before rejecting such claim for deduction, the officer shall take into account the nature and extent of the banking facilities available, considerations of business expediency and other relevant factors.

5. Rule 6DD of the IT Rules specifies circumstances under which the payment for a sum exceeding Rs. 10,000 may be made otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft. In fact on a representation made by a trade, the CBDT has also issued Circular No. 250 [F. No. 206/1/79-IT(A-II), dt. 11th Jan., 1979 [(1979) 10 CTR (TLT) 46], wherein in considering difficulties in clearance of cheques issued on banks, the CBDT stated that,

... Accordingly, any payment for business expenditure made during the period when the cheque clearing operations are suspended or other similar circumstance as aforesaid exists, will not be covered by the provisions of s, 40A(3) of the IT Act, provided the assessee furnishes evidence to the satisfaction of the ITO as to the genuineness of the payment and the identity of the payee.

6. Thus, except on those circumstances, narrated under r. 6DD of the IT Rules and as given under s. 40A(3) of the IT Act, unless there are exceptional and unavoidable circumstances, the payment made in excess of Rs. 10,000 by cash would not escape the rigour of s. 40A(3) of the IT Act

7. As far as the present case is concerned, none of the circumstances were narrated by the assessee either before the AO or before the appellate authority concerned in support of the contention that the claim for allowance should not be disallowed. The mere circumstance, that the amount had been remitted to the account of the payee, would not be a good ground to accept the case of the assessee that s. 40A(3) of the Act will not be applied to the case.

8. In the light of the provisions as it stood, there being no exceptional circumstances for remitting the amount to the credit of payee's amount (account), we do not find any good ground to uphold the order of the Tribunal. It may be pointed out that the deposit of the amount to the bank does not make the case any shade better than a cash payment for the purpose of condoning the conduct of the assessee. Consequently, the order of the Tribunal is set aside and the Tax Case (Appeal) No. 122 of 2003 is allowed. No costs. The facts in respect of other cases are not different from what has been noted above since the questions of law raised on other tax case appeals are identical. Accordingly, the orders of the Tribunal passed in other two tax case appeals are set aside and we allow Tax Case (Appeal) Nos. 1430 and 1431 of 2005. No costs.