

(1986) 01 RAJ CK 0037

In the Rajasthan High Court

Case No : Income Tax Reference No. 47 of 1975

Kejriwal Iron Stores

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 29-01-1986

Acts Referred:

Income Tax Act, 1961 — Section 256, 40A(3)

Citation : (1987) 62 CTR 227 : (1988) 169 ITR 12

Hon'ble Judges : Dwarka Prasad, Acting C.J.;Pana Chand Jain, J

Bench : Division Bench

Advocate : N.M. Ranka, for the Appellant; R.N. Surolia, for the Respondent

Judgement

Dwarka Prasad, Actg. C.J.

1. The Income Tax Appellate Tribunal, Jaipur Bench, Jaipur, has by its order dated December 27, 1974, referred the following three questions of law arising out of its order to this court for decision :

"(i) Whether, on the facts and in the circumstances of this case, the Tribunal was right in holding that the Appellate Assistant Commissioner could confirm the addition of Rs. 16,250 on a new ground not mentioned by the Income Tax Officer in his order ?

(ii) Whether, on the facts and in the circumstances of this case, the Tribunal was right in holding that the purchases of the goods were covered by the word "expenditure" used in Sub-section (3) of Section 40A of the Income Tax Act, 1961 ?

(in) Was the Tribunal right, on the facts and in the circumstances of this case, to hold that the payments made by the assessee firm to M/s. Amar Singh & Sons were payments made in respect of the purchase of the goods and as such were covered by the word "expenditure" as used in Sub-section (3) of Section 40A ?"

2. M/s. Kejriwal Iron Stores, Neem-ka-thana, is assessed to Income Tax as a

registered firm. While scrutinising the return of the aforesaid firm in respect of the assessment year 1970-71 and the account books of the firm relating to the aforesaid period, the assessing authority, viz., the Income Tax Officer, Sikar, found that there were discrepancies in the dates of payments and receipts between the purchaser and sellers in respect of three amounts totalling Rs. 16,250. He also found that each one of the three amounts exceeded Rs. 2,500 but payments were not made either by crossed cheques or demand drafts and as such the assessee committed breach of Section 40A(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). The assessing authority, therefore, directed that the amount of Rs. 16,250 be disallowed and be added back to the total income of the assessee.

3. On appeal, the Appellate Assistant Commissioner of Income Tax confirmed the finding arrived at by the assessing authority and observed that no exceptional or unavoidable circumstances have been shown to exist for not making payments in respect of the purchases in question by crossed cheques or drafts. Thus, the Appellate Assistant Commissioner also held that there was violation of the provisions of Sub-section (3) of Section 40A of the Act by the assessee. However, the Appellate Assistant Commissioner observed that in addition to the aforesaid ground, there was one other reason for the addition of Rs. 16,250 to the total income of the assessee, viz., that there were discrepancies in the dates of payments shown by the appellant and the dates of receipts shown by the sellers, who were residents of Delhi. Thus, it appeared that the cash balances in hand on these dates were carried forward as the opening balance to the next date without showing any withdrawal corresponding to the payments alleged to have been received by the sellers. The Appellate Assistant Commissioner, in these circumstances, held that the books of account of the assessee were completely unreliable as incorrect cash balances were shown therein and the withdrawals made for making payments to, the sellers were not shown. Thus, the Appellate Assistant Commissioner held that the addition of Rs. 16,250 in the total income of the assessee was justified on two counts, viz., as disallowed u/s 40A(3) of the Act and also as unexplained investment as the assessee was unable to disclose the source for making payments on the dates on which the payments were alleged to have been received by the sellers.

4. On further appeal, the Income Tax Appellate Tribunal, Jaipur Bench, confirmed the finding arrived at by the Appellate Assistant Commissioner by its order dated November 26, 1973. It was held by the Tribunal that the payments to the extent of the amount of Rs. 16,250 were made by the assessee undeniably in respect of the expenditure incurred on the purchase of goods and it was paid in respect of the price of goods purchased. It was part of the expenditure incurred by the assessee so as to fall within the purview of Sub-section (3) of Section 40A of the Act. The Tribunal also held that the payments in cash made to Amar Singh & Sons, Delhi, on May 17, 1969, August 14, 1969, and August 30, 1969, were not from the cash book of the assessee and as the source from which such payments were made has not been explained, the amount in question fell to be assessed as

unexplained investment u/s 69 of the Act in respect of the accounting year corresponding to "the assessment year 1970-71. Thus, the appeal of the assessee was dismissed by the Appellate Tribunal. Thereafter, as mentioned earlier, the Tribunal referred the aforesaid three questions to this court.

5. We may observe that once it was held that the amount of Rs. 16,250 was to be added to the total income of the assessee as expenditure disallowed on account of infringement of the provisions of Section 40A(3) of the Act because the amounts, although paid towards the price of goods purchased by the assessee in the course of his business, were not made by crossed cheques or bank drafts, although they were for sums exceeding Rs. 2,500 each. In view of the finding of fact arrived at by the Appellate Assistant Commissioner which was affirmed by the Appellate Tribunal in appeal in respect of the non-compliance of the provisions of Section 40A(3) of the Act by the assessee along with the finding that no exceptional or unavoidable circumstances were disclosed to exist by the assessee on account of which payments could not be made in respect of the purchases in question by crossed cheques or bank drafts, the addition of the amount of Rs. 16,250 is beyond challenge, if it falls within the word "expenditure" occurring in Sub-section (3) of Section 40A of the Act. The Appellate Tribunal held that the payments were made for purchase of goods and as such they were covered by the term "expenditure" occurring in Section 40A(3) of the Act.

6. The matter appears to be settled by a large number of decisions of various High Courts in this country. Section 40A(3) of the Act as it existed at the relevant time reads as under :

"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 two thousand five hundred 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."

7. The aforesaid section was added to the Income Tax Act by section 7 of the Finance Act of 1968 with effect from April 1, 1968. Sub-section (1) of Section 40A provides that the provisions of Section 40A shall have effect notwithstanding anything to the contrary contained in any other provision of the Income Tax Act relating to the computation of income under the head "Profits or gains of business or profession". Thus, any expenditure incurred by the assessee in the sum of Rs. 2,500 or above will not be allowed as a deduction unless the payment is made by a crossed cheque or by a crossed bank draft. In case payment is made in cash of a sum of Rs. 2,500 or above in respect of an expenditure incurred by the assessee, the same shall not be allowed as deduction. The purpose of enacting Section 40A(3) was clearly to prevent use of unaccounted money in carrying on business by purchases of stock-in-trade or raw materials or any payment of overhead expenses. We are of the view that payments made for

purchases would be covered by the word "expenditure" occurring in Section 40A(3) and such payments would be disallowed if they are made in cash, if the sum so paid exceeds Rs. 2,500 or more. There is no reason why the word "expenditure" should be given a restricted meaning so as to refer to only overhead expenses enumerated in Sections 30 to 43. If the provisions of Section 40A(3) are not held to apply to payments made for purchase of stock-in-trade or raw materials, then it would be defeating the intention of the legislature as the purpose of preventing unaccounted money being used for clandestine transactions would be frustrated. The view that we have taken that payments made for purchase of goods would be covered by the term "expenditure" employed in Sub-section (3) of Section 40A has also been taken by the Allahabad High Court in *U.P. Hardware Store Vs. Commissioner of Income Tax*, *Ratan Udyog Vs. Income Tax Officer and Another*, and *Addl. Commissioner of Income Tax Vs. Jamuna Dass Nemi Chand*, by the Punjab and Haryana High Court in *Commissioner of Income Tax Vs. Grewal Group of Industries*, *Commissioner of Income Tax Vs. Kishan Chand Maheshwari Dass*, and *Commissioner of Income Tax Vs. Avtar Singh and Sons*, The same view has also been taken by the Kerala High Court in *P.R. Textiles Vs. Commissioner of Income Tax*, and by the Orissa High Court in *Sajowanlal Jaiswal Vs. Commissioner of Income Tax*. All these decisions have taken the view that Section 40A(3) was designed to check tax evasion by claims of cash expenditure which are difficult to be properly investigated. It was held that the expression "expenditure" need not be given a restricted meaning, but it should include within its ambit payments made for the purchase of goods.

8. The word "expenditure" has been interpreted by their Lordships of the Supreme Court with reference to the provisions of Section 10(2)(xv) of the Indian Income Tax Act, 1922, in *Indian Molasses Co. (Private) Ltd. Vs. Commissioner of Income Tax, West Bengal*. In the aforesaid case, their Lordships observed that the idea of "spending" in the sense of "paying out or away" of money is the primary meaning of "expenditure". Thus "expenditure" is what is paid out or away and is something which is gone irretrievably. There appears to us no reason why any restriction should be placed while interpreting the term "expenditure" occurring in Section 40A(3) and money paid towards price of purchases made should necessarily fall within the term "expenditure".

9. We are, therefore, in agreement with the view taken by the Appellate Tribunal in respect of question No. 2 referred to us and we hold that the purchase of goods was covered by the word "expenditure" used in Sub-section (3) of Section 40A of the Act.

10. In respect of the third question referred to us, it may be observed that it was the assessee's own case that the three amounts totalling Rs. 16,250 were paid by the assessee to Messrs. Amar Singh & Sons of Delhi in respect of the purchase of goods. As such, on the basis of the payments made by the assessee as contained in the bills produced for the purchase of goods, there can be no

doubt that moneys were paid by the assessee to Messrs. Amar Singh & Sons of Delhi and as those moneys were paid for purchase of goods, they fall within the term "expenditure" occurring in Section 40A(3). It was pointed out by the Appellate Tribunal that the payments made by the assessee to Messrs. Amar Singh & Sons were undeniably made in respect of purchase of goods. Even if the payments were made by way of advances and were ultimately treated as discharging the liability to pay the price of the goods purchased, the payments so made must be considered to fall within the expression "expenditure" incurred for payment of price of goods. The Appellate Tribunal relied on the admission of the assessee himself that the payments made were adjusted against the bills for the purchase of goods from Messrs. Amar Singh & Sons and, therefore, such payments must be considered as expenditure incurred by the assessee for the purchase of goods. The third question, therefore, has also to be answered in the affirmative.

11. In view of the fact that the addition of Rs. 16,250 to the total income of the assessee has been made by disallowing the expenditure incurred by the assessee to that extent on account of the infringement of the provisions of Section 40A(3), it is not necessary to consider as to whether the same amount could be added as unexplained investment applying the provisions of section 69 of the Act. In our view, it would be merely academic to consider the question in the circumstances of the present case as to whether the Appellate Assistant Commissioner could confirm the addition of the sum of Rs. 16,250 on an additional ground not mentioned by the Income Tax Officer in his order. In our view, one ground is good enough and sufficient to sustain the addition of Rs. 16,250 in the total income of the assessee inasmuch as the payments were made in violation of the provisions of Section 40A(3) of the Act and it is not necessary, therefore, to consider the other aspect of the matter as to whether the same amount could also have been added to the total income of the assessee as unexplained investment u/s 69 of the Act. The first question which has been referred to us is, therefore, of academic interest only in the circumstances of the present case and it is not necessary for us to consider and give our opinion in respect of the first question.

12. In the result, the second and third questions referred to us by the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur, are answered in the affirmative, in favour of the Revenue and against the assessee, while we decline to give our opinion on the first question as it is not necessary to do so in the circumstances of the case. The parties are left to bear their own costs.