
(2014) 02 KL CK 0215

In the High Court Of Kerala

Case No : Income Tax Appeal No. 11 of 2014

MRS Roadways

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 10-02-2014

Acts Referred:

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

Citation : (2015) 276 CTR 94 : (2014) 367 ITR 62

Hon'ble Judges : Dr. Manjula Chellur, C.J.; A.M. Shaffique, J

Bench : Division Bench

Advocate : Mohan Pulikkal, G. Jayaprakash, Manju Rajan and R. Anas
Muhammad Shamnad, Advocate for the Appellant; P.K.R. Menon, Senior Counsel,
Government of India (Taxes) and Jose Joseph, Standing Counsel, Advocate for
the Respondent

Judgement

A.M. Shaffique, J.—This appeal is filed by the assessee against the order passed by the Income-tax Appellate Tribunal, Cochin Bench in I.T.A. No. 74/Coch/2013 with reference to the assessment year 2009-10. The facts in this case would disclose that the assessee being a partnership firm, undertakes transporting contract for transportation of goods for various organisations. During the assessment year, the assessee has spent Rs. 4.77 crores towards lorry hire charges of which the assessee had paid a sum of Rs. 1,06,69,600 in cash, contrary to the provisions of section 40A(3) of the Income-tax Act. The Assessing Officer disallowed the said amount. The assessee preferred an appeal before the Commissioner of Income-tax (Appeals), which stood dismissed against which the appeal was preferred before the Tribunal, which also came to be dismissed.

2. The main contention urged by the appellant is that the assessee was maintaining accounts properly. It does not own sufficient number of lorries for undertaking the transportation contract and, therefore, it usually hires lorries from the market and the freight amount is determined through negotiations with lorry drivers and the payment is made to the concerned lorry drivers in cash.

According to them, this was being done out of the business expediency and on account of the special nature of business they have undertaken.

3. The Tribunal, on an elaborate consideration of the matter, found that the explanation offered by the assessee was not satisfactory as the assessee has failed to show that the payments made by it in violation of the provisions of section 40A(3) of the Act is covered by any of the exceptions provided under rule 6DD of the Income-tax Rules.

4. The assessee while impugning the aforesaid orders has raised the following substantial questions of law :

"(i) Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was correct in holding that the appellant was not entitled to deduction in respect of lorry charges paid in cash exceeding Rs. 20,000 under section 40A(3) of the Income-tax Act?

(ii) Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was correct in holding that the amount paid as lorry hire charges to strangers for one-time transportation in cash exceeding the prescribed limit of Rs. 20,000 is outside the ambit of business expediency as provided under the proviso to section 40A(3) of the Act?

(iii) Whether, on the facts, and in the circumstances of the case, the Income-tax Appellate Tribunal was correct in holding that the relationship of the drivers of the lorries hired for transportation of goods towards the appellant was not that of an agent for the purpose of rule 6DD(k) of the Income-tax Rules?

(iv) Whether, on the facts, and in the circumstances of the case, the Income-tax Appellate Tribunal was correct in holding that the appellant, while hiring lorries and drivers from the market was bound to pay the lorry hire charges only by way of an account payee cheque or demand draft at all times?

(v) Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was correct in accepting the order of the lower authorities without allowing the deduction of the aggregate eligible amount of Rs. 20,000 fixed as per the amended section 40A of the Act from the amount paid in cash on a single day?"

5. Section 40A(3) reads as under:

"Where the assessee incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day; otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees, no deduction shall be allowed in respect of such expenditure."

The assessee had relied upon the proviso, which reads as under:

"Provided that no disallowance shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-section (3) and

this sub-section where a payment or aggregate of payments made to a person in a day otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees, 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."

Rules have been prescribed under rule 6DD(k), which reads as under:

"(k) where the payment is made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person;"

The appellate authorities found that the assessee was engaging lorries on hire from the market through brokers. The assessee was not paying any amount to the concerned lorry owners. Even, according to the assessee, lorry freights are finalised with the lorry owners. Lorry drivers cannot be considered as the agents of the assessee. Though it was contended that for the purpose of Kerala General Sales Tax Act, lorry drivers are treated as agents of the owner of the goods, the said principle cannot be made applicable to the provisions of the Income-tax Act as the provisions of the KGST Act is concerned with the purpose of fixing responsibility/liability on the owner of the vehicle or owner of the goods.

As far as the case on hand is concerned, the assessee is neither the owner of the goods nor the owner of the vehicle carrying the goods. If the assessee has to claim exemption under section 40A(3), necessarily he has to comply with the statutory provision and the rules framed thereunder. Only in instances where the assessee falls under any of the exemptions covered in rule 6DD, he is entitled to claim the said amount as an exemption under section 40A(3).

In so far as both the authorities had found that the claim of the assessee is not justifiable, we do not think that the questions of law projected by the assessee arises for consideration in the above appeal and the same is therefore dismissed.