
(1986) 09 RAJ CK 0054
In the Rajasthan High Court
Case No : Income Tax Reference No. 9 of 1977

Nahgi Lal

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 20-09-1986

Acts Referred:

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

Citation : (1987) 66 CTR 109 : (1987) 167 ITR 139

Hon'ble Judges : P.C. Jain, J; Farooq Hasan, J

Bench : Division Bench

Advocate : C.S. Bapna and A. Kasliwal, for the Appellant; R.N. Surolia, for the Respondent

Judgement

P.C. Jain, J.—In this reference u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as the "Act"), the following question of law has been referred to this court for its opinion, pertaining to the assessment year 1971-72, at the instance of the assessee:

"Whether, on the facts and in the circumstances of this case, the Tribunal was justified in holding that payments in sums exceeding Rs. 2,500 made for the purchase of the commodities are hit by the provisions of Sub-section (3) of Section 40A of the Income Tax Act, 1961, and that, therefore, such payments should be added to the total income of the assessee in terms of the aforesaid sub-section ?"

2. The facts which are admitted and/or have been found by the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur (hereinafter referred to as the "Tribunal"), are stated hereinafter:

3. The applicant is a firm. The assessee deals in agricultural commodities at Kota. During the accounting year 1971-72, which ended on Diwali, 1970, it made payments to various parties for the purchase of goods in sums exceeding Rs.

2,500, aggregating Rs. 46,203. The Income Tax Officer pointed out to the assessee that the said payments contravened the mandatory provisions of Sub-section (3) of Section 40A of the Act and, therefore, the Income Tax Officer added the sum of Rs. 46,203 to the total income of the assessee. The case of the Revenue was that all the payments in question were not made by crossed cheques and, therefore, there was contravention of Sub-section (3) of Section 40A of the Act. The assessee submitted that its case is covered under Rule 6DD(j). The order of assessment dated March 6, 1974, passed by the Income Tax Officer was assailed in an appeal before the Appellate Assistant Commissioner of Income Tax, Kota Range, Kota. The learned Appellate Assistant Commissioner did not accept the said contention and held that the assessee had not been able to show any exceptional or unavoidable circumstances under which it had made the payments in cash exceeding Rs. 2,500. Aggrieved by the order of the learned Appellate Assistant Commissioner dated August 1, 1974, the matter was further "carried in appeal to the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur. The case before the Tribunal was that the word "expenditure " as used in Sub-section (3) of Section 40A of the Act does not include " purchases " and, therefore, the payments made for purchases were not hit by the aforesaid provisions. The learned Tribunal rejected the contention and dismissed the appeal, vide its order dated December 29, 1975,

4. The assessee moved an application before the Tribunal requiring it to refer some questions which according to it were questions of law arising out of the order of the Tribunal in ITA No. 574/JP/1974-75 dated December 29, 1975, in respect of the assessment year 1971-72. In these circumstances, the question has been referred to us for our opinion.

5. The following are the admitted facts on record :

(1) The payments have been made by the assesses to the traders at Kota who are themselves maintaining bank accounts and the payments have been made after a time lag of six to seven days of the transaction in all the cases:

(2) No exceptional or unavoidable circumstances were brought to the notice of the assessing authority. The assessee had filed confirmation from the seller and so there was no dispute about the genuineness of the payments and the identity of the payee.

6. Shri Kasliwal and Shri Bapna, learned counsel for the applicant, urged before us the following submissions to substantiate the case of the assessee while assailing the order of the assessing authority and the appellate authorities:

(1) That the Appellate Assistant Commissioner of Income Tax rejected the appeal on the basis of the decision of the Tribunal in the case of Kanti Lal Purshottam & Co., Ramgangmandi v. ITO, A-Ward, Kota (ITA No. 800/ JP/1971-72, A.Y. 1970-71), in which the Tribunal disallowed the payments made to the traders and also held that the purchases were part of expenditure. The submission of learned counsel is that the said decision in the case of Kanti Lal Purshottam & Co.

v. CIT has been set aside by a Division Bench of this court in Kanti Lal Purshottam and Co. Vs. Commissioner of Income Tax, In the premises aforesaid, it was submitted by learned counsel that consequent upon the reversal of the decision of the Tribunal in the said case, the case of the assessee should be decided in its favour.

(2) That the case of the assessee is covered by Rule 6DD(j) and the circulars issued by the Central Board of Direct Taxes which are binding on all the officers and persons employed in the execution of the Income Tax Act.

(3) That the provisions of Section 40A(3) of the Act are not mandatory.

(4) That the word "expenditure" as used in Sub-section (3) of Section 40A of the Act does not include purchases and, therefore, the payments made for purchases would not be within the inhibition of Section 40A(3) of the Act.

7. Shri Surolia, learned counsel for the Revenue, submitted that the Tribunal did not commit any error of law in confirming the disallowance of the said amount of Rs. 46,203. Shri Surolia also urged that no question of law arises when the Tribunal had taken into consideration the material on record and found that there were no exceptional circumstances for making payments. Learned counsel for the Revenue also submitted that though the decision of the Tribunal in Kantilal's case has been reversed by a Division Bench of this court in Kanti Lal Purshottam and Co. Vs. Commissioner of Income Tax, still the merits of the case remain unaffected as that case is distinguishable on facts.

8. We have given our thoughtful consideration to the submissions made by learned counsel for the assessee as well as learned counsel for the Revenue and have perused the record of the case. Kanti Lal Purshottam and Co. Vs. Commissioner of Income Tax, is distinguishable. In that case, the learned Division Bench of this court held as under :

1. That there was no mens rea or any mala fide intention and the payments were found to be genuine and the identity of the payee was not disputed and that there was no mischief of tax evasion on the part of the assessee:

2. Section 40A(3) came into force from April 1, 1969, and the period during which the cash payments were made ranged between April 3 to June 2, 1969. The Division Bench pointed out that every assessee does not subscribe to the Gazette and, therefore, the matters which are published in the Gazette come to the knowledge of the public after some time only. The said section came into force with effect from April 1, 1969, and the first cash payment was made by the said firm on April 3, 1969. In such circumstances, the learned Division Bench was of the opinion that the assessee was entitled to the benefit of Clause (j) as this circumstance was taken as an exceptional or unavoidable circumstance.

3. The learned Division Bench also held that the rigours of the whole restrictions imposed by Section 40A(3) of the Act were loosened by the proviso to the said section. By making Rule 6DD, it further stands loosened.

9. In the case on hand, the facts are quite different. The relevant assessment year is 1971-72, during the previous year for which such payments were made. Cash payments were made much after the coming into force of Section 40A(3) of the Act and the amended rules were made applicable and after issuance of the Circulars dated May 2, 1969, and April 19, 1970, by the Central Board of Direct Taxes. The learned Division Bench of this court, in the case of Kanti Lal Purshottam and Co. Vs. Commissioner of Income Tax, held that the assessee was entitled to exemption under Clauses (f) and (j) of Rule 6DD on account of peculiar circumstances of that case, as those peculiar circumstances were taken as exceptional or unavoidable circumstances entitling the assessee to the benefit of Clause (j). In the instant case, the assessee submitted before the Income Tax Officer that the assessee purchased goods from Kachha Aratias and Kachha Aratias, in turn, purchased goods from agriculturists or producers and he had to make payment to the agriculturists in cash on the same day. The submission made by the assessee before the Income Tax Officer was found to be erroneous as it was found that in almost all the cases there was a time lag of six to seven days between the date of purchase of the goods and the date of actual payment. The Income Tax Officer observed that had there been any pressing demand on behalf of Kachha Aratias to make payment on the same day, there could not have been much time lag between the date of purchase of the goods and the date of actual payment. Learned counsel for the assessee who appeared before the Income Tax Officer also submitted that the case of the assessee-firm was covered by the residuary clause of Rule 6DD, but no exceptional or unavoidable circumstances warranting payment otherwise than by crossed cheque or crossed bank draft were pointed out by the assessee to the Income Tax Officer. Consequently, the Income Tax Officer observed that the assessee had not been able to establish that the payments by cheque or bank draft were not possible or the same would have caused genuine difficulty to the payee, or there were any exceptional or unavoidable circumstances due to which payments could not be made by crossed cheques. The learned Income Tax Officer, in the assessment order, also held that the payments were made by the assessee to other traders at Kota, who were themselves maintaining bank accounts and the payments were made after a time lag of six to seven days practically in all the cases. Thus, the finding recorded by the Income Tax Officer is a finding of fact. In *Registhan Pvt. Ltd. Vs. Commissioner of Income Tax*, a Division Bench of this court dismissed the application for reference u/s 256(2) filed by the assessee on the ground that no question of law arose as the Tribunal had taken into consideration the material on record and found that there were no exceptional circumstances for making payment in cash.

10. Another limb of argument of learned counsel for the assessee was that the word " expenditure " as used in Section 40A(3) of the Act does not include purchases and, as such, disallowance was erroneous and illegal. We are not impressed by the arguments advanced by learned counsel for the assessee. The word " expenditure ", as used in the aforesaid section, in our opinion, includes

expenditure incurred on purchases also. There is nothing in the context of the aforesaid section to restrict the meaning of the word " expenditure " to payment like wages, salaries, etc., as submitted by learned counsel for the assessee. A perusal of Rule 6DD, which has been framed in terms of the second proviso to Sub-section (3) of Section 40A, vires of which have not been challenged, would reveal that purchases are covered by the word " expenditure ". Clause (f) of Rule 6DD is as follows:

" (f) where the payment is made for the purchase of-

(i) agricultural or forest produce; or

(ii) the produce of animal husbandry (including hides and skins) or dairy or poultry farming; or

(iii) fish or fish products ; or (iv) the products of horticulture or apiculture;

to the cultivator, grower or producer of such articles, produce or products. "

11. This makes the entire position clear that the " expenditure " includes expenditure incurred in purchase also.

12. In the application u/s 256(1) of the Act, the assessee desired the following questions of law to be referred for the opinion of this court :

" 1. Whether the word "expenditure" occurring in Section 40A(3) of the Income Tax Act, includes expenditure on purchase of stock-in-trade also?

2. Whether the word "expenditure" occurring in Section 40A(3) of the Income Tax Act is to be interpreted in the light of the Supreme Court decision in the case of Indian Molasses Co. (Private) Ltd. Vs. Commissioner of Income Tax, West Bengal,

13. But the Tribunal referred the question to this court as referred to above. Shri Surolia, learned counsel for the Revenue, submitted that the question raised, viz., that the word " expenditure " does not include within it "purchases" does not require to be answered by this court. The submission made by Shri Surolia is not correct. A look at the question referred for our opinion, in a broad spectrum, would reveal that the question referred to includes the determination of the said question also. Therefore, we have considered the submission made by learned counsel for the assessee and have answered it accordingly.

14. In Porwal Udhyog (India) Vs. Commissioner of Income Tax, an amount of commission of Rs. 16,400 was disallowed u/s 40A(3) as the assessee could not adduce evidence to show that there were exceptional and unavoidable circumstances necessitating the payment in cash. In Bhilai Motors v. CIT [1987] 167 ITR 147, a Division Bench of the Madhya Pradesh High Court held that the question whether cash payment of an amount exceeding Rs. 2,500 was made in exceptional circumstances is a question of fact. We are in agreement with the assessing authority, the Appellate Assistant Commissioner of Income Tax and the

Tribunal that the assessee could not make out a case for payment having been made in cash under any exceptional or unavoidable circumstances. The payments were made after six to seven days of the transaction. It is not the case of the assessee that the purchases are covered under exceptional or unavoidable circumstances or by any of the circulars issued by the Central Board of Direct Taxes. We are of the opinion that to claim the benefit of Rule 6DD(j), it is not sufficient for the assessee merely to establish that the purchases were genuine and the payees were identifiable. The assessee is further required to prove that due to exceptional and unavoidable circumstances, or because payment by cheques was not practicable, cash payments were made.

15. The Ministry of Finance had received inquiries from the various trade associations and trading Communities about the operation of the provisions of Section 40A(3) of the Income Tax Act for the disallowance of expenditure in business* and professions for which a payment exceeding Rs. 2,500 is made otherwise than by a crossed bank cheque or draft. Some exclusions have been notified by the Central Board of Direct Taxes by issuing circulars from time to time. With a view to avoid genuine hardship to the taxpayers, particularly in the rural areas, certain exceptions were made in Rule 6DD of the Income Tax Rules, 1962, by virtue of which payment of a sum exceeding Rs. 2,500 may be made otherwise than by a crossed cheque drawn on a bank, or crossed bank draft in certain circumstances. These exceptions cover, inter alia, payments made for purchases of agricultural or forest produce, cottage industry products, etc., from the producers of such products; payments made in villages or towns having no banking facility to any person carrying on business or profession in any such village or town; payments made through the banking system, that is, in the form of letter of credit arrangements, telegraphic transfers, adjustments in accounts, or bills of exchange made available only to a bank ; and payments by way of gratuity, retrenchment compensation or other terminal benefits to low paid employees of the business or profession. Exceptions are laid down under Clause (f) of Rule 6DD of the Income Tax Rules which provide that the provisions for disallowance of the expenditure might not be applied if the assessee establishes that the payment could not be made by a crossed bank cheque or draft due to exceptional or unavoidable circumstances and also furnishes evidence to the satisfaction of the Income Tax Officer as to the genuineness of the payment and the identity of the payee. The following guidelines have been issued by the Board for the consideration of the Income Tax Officer to invoke his discretion for relaxing the requirement regarding the payment in excess of Rs. 2,500 to be made by crossed cheques or crossed bank drafts. The circumstances mentioned below are illustrative which would meet the requirement of the rules :

- (a) the purchaser is new to the seller; or
- (b) the transactions are made at a place where either the purchaser or the seller does not have a bank account; or
- (c) the transactions and payments are made on a bank holiday ; or

(d) The seller is refusing to accept the payment by way of crossed cheque/draft and the purchaser's business interest would suffer due to non-availability of goods otherwise than from this particular seller ; or

(e) the seller, acting as a commission agent, is required to pay cash in turn to persons from whom he has purchased the goods; or

(f) specific discount is given by the seller for payment to be made by way of cash.

16. A careful study of the provisions of Section 40A(3) and the rules made thereunder and the circulars issued by the Central Board of Direct Taxes would reveal that the case of the assessee is not covered under any exceptional or unavoidable circumstances or any of the exemptions or by any of the circulars issued by the Central Board of Direct Taxes.

17. In the premises aforesaid, the Tribunal was, therefore, justified in holding that the payments in sums exceeding Rs. 2,500 made for the purchases were hit by the proviso to Sub-section (3) of Section 40A of the Act and, as such, such amounts should have been added to the total income of the assessee in terms of the said section.

18. In the result, the answer to the question is in the positive in favour of the Revenue and against the assessee. The reference is answered accordingly.