

(1999) 08 AP CK 0011

In the Andhra Pradesh High Court

Case No : Writ Petition No. 14424 of 1999 2 August 1999 A.Y. 1996-97

SMT. CH. MANGAYAMMA

APPELLANT

Vs

UNION OF INDIA

RESPONDENT

Date of Decision : 02-08-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 19

Income Tax Act, 1961 — Section 192, 206C, 234B, 40A, 44AC

Citation : (2000) 158 CTR 35 : (1999) 106 TAXMAN 339

Hon'ble Judges : P. Venkatarama, J;B. Prakash Rao, J

Bench : Full Bench

Advocate : Y. Ratnakar, for the Assessee and S. R. Ashok, for the Revenue, for the Appellant;

Judgement

Prakash Rao, J.

This writ petition is filed challenging the validity of section 40A(3) of the Income Tax Act, 1961 (" hereinafter referred to as `the Act") which disallows 20 per cent of cash payments in excess of Rs. 20,000 in the computation of business expenditure as being arbitrary and violative of articles 14 and 19(1)(g) of the Constitution and for a direction to delete the addition of Rs. 6,83,258 in the Income Tax assessment of the petitioner.

2. Skeletal facts which prompted the filing of the writ petition are: The petitioner is an assessee under the Act. Originally her husband was carrying on the business of purchase and sale of cold drinks and he died in the year 1991. Later on, the petitioner continued the same business. Claiming herself as an illiterate woman, she alleged that she simply purchases cold drinks from bottlers and sells the same to customers. During the year ending 31-3-1996, she was appointed as a dealer by Saryarava Sugars (P) Ltd. which was a bottler on behalf of Coca Cola.

According to the petitioner, the business being a petty business, the payments were being made in cash as per the bills issued from time to time.

In the return filed for the year 1996-97, she declared income at Rs. 43,368 and total sales at Rs. 43,17,213, out of which an amount of Rs. 37,22,399 was paid to Sarvaraya Sugars (P.) Ltd. which includes payment of Rs. 34,18,291 in cash. Since the cash payments exceeded Rs. 20,000 at a time, the assessing officer, u/s 40A(3) added 20 per cent of the amount paid in cash, i.e., Rs. 6,83,258 as the income of the assessee and assessed her to tax on a total income of Rs. 7,26,630 and determined the tax with interest u/s 234B of the Act at Rs. 4,39,288 minus the prepaid tax of Rs. 245. The assessee unsuccessfully claimed that the cash transactions are genuine and are allowable expenditure under the Act.

3. Shri Y. Ratnakar, counsel for the petitioner, contended that the provisions of section 40A(3), as amended by the Finance Act, 1995, stipulate that 20 per cent of the expenditure incurred by an assessee exceeding Rs. 20,000, otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft, shall not be allowed as a deduction. The said section further provides that no disallowance under sub-section (3) shall be made where any payment in a sum exceeding Rs. 20,000 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. Clauses (j)(A) and (2) of rule 6DD of the Income Tax Rules, 1962 as it stood prior to 25-7-1995, enumerated the circumstances under which cash payments exceeding Rs. 10,000 can be accepted. However, clause (j) was omitted from 25-7-1995. Thus, even in respect of "genuine transactions, where the payee is known, the disallowance of 20 per cent as contemplated in section 40A(3) is made applicable. He relied on the decision of the Apex Court in *Attar Singh Gurmukh Singh v. ITO*, (1991) 191 ITR 667 (SC), wherein the constitutional validity of section 40A(3) was questioned on the ground that imposition of tax on assumed income amounts to putting a restriction on the right to carry on business and, hence, is violative of articles 14 and 19(1)(g). The Supreme Court upheld the validity of the said section on the premise that rule 8DD amply takes care of the assessee in cases of genuine transactions. In view of the deletion of sub-clauses (1) and (2) of clause (j) of rule 6DD, 20 per cent of the cash payments exceeding Rs. 20,000 in respect of bona fide transactions are disallowed and the effect of section 40A(3) applies with more rigour. Therefore, the position as it obtains now, is arbitrary and amounts to putting a restriction on carrying on trade which is violative of articles 14 and 19(1)(g). In the absence of any corresponding provision or rule authorising the payments in cash as deductible expenditure, no genuine cash transaction would be allowed as expenditure.

It was stated that an appeal is filed and is pending. However, in view of the amended provisions, the petitioner apprehends that the authorities would not go into the nature of the transactions.

4. The learned senior. standing counsel repelling the pleas so raised, contended that the amendment brought in is well within the legislative competence of the Parliament and is intended to curb the circulation of black money in the business.

Before we delve into the merits of the contentions raised, it is apposite to notice under sub-section (3) of section 40A as it now stands :

"(3) Where the assessee incurs any, expenditure in respect of which payment is made, after such date (not being later than the 31-3-1969) as may be specified in this behalf by the Central Government by notification in the Official Gazette in a sum exceeding twenty thousand rupees otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft, twenty per cent of such expenditure shall not be allowed as a deduction.

** ** *

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

By the Finance Act, 1996, the figure `Rs. 20,000 "was substituted for the previous figure "Rs. 10,000". Moreover, sub-section (3) before its amendment provided for disallowance to the full extent of Rs. 10,000 in case the provision was infringed. However, now, the rigour of that provision has been softened by restricting the disallowance to 20 per cent.

5. Rule 6DD(j) which was framed to give effect to section 40A(3), as it stood prior to 25-7-1995, was in the following terms:

"6DD. Cases and circumstances in which payment in a sum exceeding ten thousand rupees may be made otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft-No disallowance under subsection (3) of section 40A 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 the cases and circumstances specified hereunder, namely:-

(a) to (i)** ** *

(i) in any other case, where the assessee satisfies the assessing officer that the payment could not be made by a crossed cheque drawn on a bank or by a crossed bank draft-

(1) due to exceptional or unavoidable circumstances, or

(2) because payment in the manner aforesaid was not practicable, or would have caused genuine difficulty to the payee, having regard to the nature of the transaction and the necessity for expeditious settlement thereof, and also

furnishes evidence to the satisfaction of the assessing officer as to the genuineness of the payment and the identity of the payee.

6. However, with effect from 25-7-1995. Rule 6DD(j) reads:

"(j) where the payment is made by an assessee by way of salary to his employee after deducting the Income Tax from salary in accordance with the provisions of section 192 of the Act, and when such employee-

(A) is temporarily posted for a continuous period of fifteen days or more in a place other than his normal place of duty or on a ship; and

(B) does not maintain any account in any bank at such place or ship;"

7. In Attar Singh Gurmukh Singh's case (supra), the Supreme Court had an occasion to consider the validity of section 40A(3). Repelling the attack as to its invalidity, it was held :

"In our opinion, there is little merit in this contention. Section 40A(3) must not be read in isolation or to the exclusion of rule 6DD. The section must be read along with the rule. If read together, it will be clear that the provisions are not intended to restrict the business activities. There is no restriction on the assessee in his trading activities. Section 40A(3) only empowers the assessing officer to disallow the deduction claimed as expenditure in respect of which payment is not made by crossed cheque or crossed bank draft. The payment by crossed cheque or crossed bank draft is insisted on to enable the assessing authority to ascertain whether the payment was genuine or whether it was out of the income from undisclosed sources. The terms of section 40A(3) are not absolute. Considerations of business expediency and other relevant factors are not excluded. Genuine and bona fide transactions are not taken out of the sweep of the section. It is open to the assessee to furnish to the satisfaction of the assessing officer the circumstances under which the payment in the manner prescribed in section 40A(3) was not practicable or would have caused genuine difficulty to the payee. It is also open to the assessee to identify the person who has received the cash payment. Rule 6DD provides that an assessee can be exempted from the requirement of payment by a crossed cheque or crossed bank draft in the circumstances specified under the rule. It will be clear from the provisions of section 40A(3) and rule 6DD that they are intended to regulate business transactions and to prevent the use of unaccounted money or reduce the chances to use black money for business transactions. [See *Mudiam Oil Co. and Others Vs. Income Tax Officer and Others*,]. If the payment is made by a crossed cheque drawn on a bank or a crossed bank draft, then it will be easier to ascertain, when deduction is claimed, whether the payment was genuine and whether it was for the income from disclosed sources (p. 672)".

Continuing further, it was held :

".....in interpreting a taxing statute, the court cannot be oblivious of the proliferation of black money which is under circulation in our country. Any

restraint intended to curb the chances and opportunities to use or create black money should not be regarded as curtailing the freedom of trade or business." (p. 673)

8. No doubt, rule 6 DD(j) as in force at the relevant time was kept in view and both the provisions were read together. It was not a case where rule 6DD(j) was under challenge. However, it is to be noted that the main substantive provision u/s 40A(3) makes a provision for prescribing such cases and circumstances having regard to banking facilities, business expediency and other relevant factors. Thus, the rule making authority is empowered to specify rules in this regard. The main object u/s 40A(3) is to regulate the financial transactions and to prevent the use of unaccounted money or reduce the chances of use of black money for business transactions. Under the earlier rule 6DD(j), prior to its amendment, the rule-making authority, by virtue of the powers conferred, made provision for unavoidable circumstances and genuine difficulties as the permissible grounds for waiving the requirement. The said rule was in force for quite some time and it was left to the discretion of the assessing authorities to test such transactions on the touch-stone of the said limitations. The rule-making authority in the light of the experience and in its wisdom, sought to take away the said permissible factors. It is not as if the section itself does not provide for exceptions to be prescribed by the rule-making authority in appropriate cases, having due regard to the factors set out in the proviso to sub-section (3). The mere fact that the rule-making authority did not retain the old rule does not make the main section itself unconstitutional. Moreover, to what extent exceptions could be provided to the operation of the general rule conceived in public interest to curb tax evasion is primarily for the rule-making authority to judge. We cannot, therefore, accept the argument of the learned counsel for the petitioner.

9. In *Union of India and another etc. etc. Vs. A. Sanyasi Rao and other etc. etc.*, , the Supreme Court while considering the validity of the provisions under sections 44AC and 206C of the Act on the touch-stone of article 14 of the Constitution held:

".....The relevant entry therein (taxes on income other than agricultural income) should be liberally construed. There were sufficient materials before Parliament to hold that due to very many causes, income from certain trades could not be brought to tax and there was large scale evasion. The sufficiency of the material in that regard is not open to scrutiny by the court. All that is envisaged in the impugned statutory provisions is only an estimated (Income Tax) "advance tax": (ii) since it came to light that the income from certain trades could not be brought to tax, the Legislature enacted the instant machinery provisions. The provisions are reasonable and have sufficient nexus to the objects that are sought to be achieved. The statutory provisions were intended to operate in all trades where the evasion and chances of evasion were greater than others and due to practical experience over the years, it was felt that the particular trades or business necessitated speedier provision for recovery or collection. It is in this

perspective only, trades in particular commodities, wherein evasion was predominant and call appropriate machinery to secure the payment of tax, the legislation was enacted. In the case of taxation laws, the Legislature has got a wide discretion to pick and choose persons, objects, districts, etc., for legislating. The power of Legislature to classify or select certain objects or persons to which the law will apply is of great magnitude. The court permits a greater attitude to the discretion of the Legislature. It has been invariably held by this court that in tax matters, the State is allowed to pick and choose districts, objects, persons, methods and even rates for taxation, if it does so reasonably. The provisions attacked in this case are reasonable, as could be seen from the legislative history of the object and the objects sought to be achieved." (p. 346)

10. In view of the aforesaid principles as laid down, and the object as sought to be achieved u/s 40A(3), any changes made in the subordinate legislation would not in any way affect the substantive provision. Moreover, by deleting the circumstances as contemplated earlier, viz., sub-clauses (1) and (2) of rule 6DD(j), the objects of curbing the circulation of black money and regulating the business transactions become more strengthened and it avoids any undue advantage being taken by unscrupulous assesseees or litigation being multiplied. As the position stands now, 20 per cent of the cash transactions exceeding Rs. 20,000 are disallowed in computing the business expenditure but not the entire Rs. 20,000. While the amended provision confers advantage to the assessee to this extent, the circumstances permitted to be taken into account by the assessing authority are no longer available by reason of deletion of old rule 6DD(j). But that by itself does not make section 40A(3) arbitrary and unconstitutional. One cannot plead ignorance of law and make cash payments contrary to law. It is too late in the day to accept any such proposition. Furthermore, in the present day banking scenario, the mode of payment by way of crossed cheques or demand drafts cannot be said to be an onerous duty cast on an assessee which can be made a foundation for attacking the validity of the said section. Therefore, it is not open for attacking the provision as violative of any provision of the Constitution. There is no arbitrariness or discrimination in the said provision warranting interference by this court under the circumstances.

11. In view of the above, there are absolutely no merits in the challenge made as to the validity of section 40A(3) by mere deletion of sub-clauses (1) and (2) of rule 6DD(j). The said provision is perfectly valid and we may hasten to add that the deletion of sub-clauses (1) and (2) of rule 6DD(j) is only a step forward in the achievement of the avowed object envisaged u/s 40A(3).

12. The writ petition, therefore, fails and is, accordingly, dismissed. No Costs.