IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

TAX APPEAL NO. 17 OF 2007

The Commissioner of Income Tax,
Nashik .. Appellant

Versus

Jagdish Deoram Patil .. Respondent

WITH
TAX APPEAL NO. 18 OF 2007

The Commissioner of Income Tax,
Nashik .. Appellant

Versus

Jagdish Deoram Patil .. Respondent

WITH
TAX APPEAL NO. 19 OF 2007

The Commissioner of Income Tax,
Nashik .. Appellant

Versus

Jagdish Deoram Patil .. Respondent

Shri Alok Sharma, Advocate for the Appellant in all matters.
Shri P. R. Katneshwarkar, Advocate for the Respondent in all matters.

CORAM : S. V. GANGAPURWALA AND
A. I. S. CHEEMA, JJ.
DATE : 26TH MARCH, 2015.

PER COURT :

. All these three appeals involve common question of law and fact, as such are decided together.

2. The Court has framed the following substantial question of law :

Whether the provisions of Sec. 40-A(3) are inapplicable to the assessee, because assessee is a commission agent ?

2. The Assessing Officer has disallowed 20% of the purchases made by the assessee in cash or self cheque exceeding Rs. 20,000/- U/Sec. 40-A(3) of the Income Tax Act. The assessee aggrieved thereby filed appeals before the Commissioner. The Commissioner allowed the appeals. Aggrieved thereby the department filed appeals before the Tribunal. The Tribunal dismissed the appeals. Aggrieved thereby the present appeals by the Department.

3. Mr. Sharma, the learned counsel for the appellant submits that, the Commissioner has reproduced only part of the press note and has not produced the complete press note. The Commissioner and the Tribunal have relied on the press note

issued by the Ministry of Finance, relevant portion of press note reads as under :

> *Question 3 :* Does the requirement apply to payments made by commission agents (arhatias) for goods received by them for sale on commission or on consignment basis ?
>
> *Answer :* No, this is because such a payment is not an expenditure deductible in computing the taxable income of the commission agent (arhatiya). For the same reason, the requirement does not also apply to advance payments made by the commission agent to the party concerned against supply of goods. However, where a commission agent (arhatiya) purchases goods on his own account, and not on commission basis, the requirement will apply in that case.

4. According to the learned counsel for the appellant, the Assessing Officer had observed that, on verification it is seen that Assessee has purchased the goods from banana commission agent in cash/self cheque exceeding Rs. 20,000/- and violated the provision of Sec. 40A(3) of the I. T. Act. Voluntary statements of such parties were also obtained. It was admitted by the said parties that the assessee has purchased the goods from them either by cash or by self cheque exceeding Rs. 20,000/- and thereby disallowed 20% of the said cash purchases.

5. According to Mr. Sharma, the learned counsel, the Commissioner and Tribunal failed to consider this aspect of the

matter and solely on the ground that assessee is a commission agent have accepted the contention of assessee. The same is erroneous.

6. Mr. Katneshwarkar, the learned counsel for the respondent/assessee submits that, the Commissioner and Tribunal have considered the assessment order, wherein assessing officer himself has referred the status of the assessee as Commission Agent. After considering the said aspect the Commissioner and the Tribunal, relying on the press note issued by the Ministry of Finance and the judgment of the Allhabad High Court in a case of CIT Vs. Banwari Lal Banshidhar reported in (1998) 229 ITR 229 have dismissed the appeals.

7. We have considered the submissions canvassed by the learned counsel for respective parties.

8. The Assessing Officer in its assessment order has observed as under :

> "8. During the course of assessment proceedings, on verification it is seen that the assessee had purchased the goods from banana commission agents in cash/self cheque, exceeding Rs. 20,000/- and violated the provisions of Sec. 40A(3) of the I. T. Act, 1961. The account extracts from various parties from whom, the assessee had purchases the goods were called for and obtained the same. The voluntary statement of such parties were also

obtained. It was admitted by these parties, that the assessee had purchased goods from them either in cash or self cheque. For the year under consideration the assessee had purchased goods in cash/self cheque, exceeding Rs. 20,000/-, from the following parties :-

Sr. No.	Name of the concern from whom goods purchased	Name of the assessee concern who purchased	Total Amount of cash purchased
1	M/s. Chakradhar Fruit Co. Waghoda	Shri Jagdish D. Patil	Rs. 70,45,083/-

Thus, total purchases in cash/self cheque, exceeding Rs. 20,000/- are at Rs. 70,45,083/-. Since the assessee has violated the provisions of section 40A(3) of the I. T. Act, 1961, 20% of such cash purchases should required to be disallowed. Accordingly, the assessee was intimated vide this letter dated 15/03/2001. In reply to this, the assessee has furnished written submission stating that "these are the payment made for purchase of agricultural produce which is not hit vide Rule 6DD of the I. T. Rule, 1961, therefore no disallowance on this ground is required to be made."

9. This shows that the Assessing Officer has considered the fact that, the assessee had purchased the goods from banana commission agents. Whereas the Commissioner and the Tribunal have held that, the assessee is a commission agent and as such press note completely applies. Reading the press note as reproduced supra, it is clear that when a commission agent (arhatiya) purchases goods on his own account and not on

commission basis, the requirement will apply even if assessee is commission agent and further finding will have to be given by the authority as to whether the goods which are purchased by the Assessee (Commission Agent) are goods purchased on his own count or on a commission basis unless a clear finding is given on the same, the press note cannot be applied.

10. Such, a finding is not appearing in the order passed by the Assessing Officer, the Commissioner or the Tribunal.

11. In the light of the above, the impugned orders passed by the Assessing Officer, Commissioner and the Tribunal are quashed and set aside. The parties are relegated to the Assessing Officer for determination of said issue afresh. The appeals accordingly are partly allowed. No costs. The parties shall appear before the Assessing Officer on 13.04.2015.

[A. I. S. CHEEMA, J.] **[S. V. GANGAPURWALA, J.]**

bsb/March 15