IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1224 OF 2015

Principal Commissioner of Income Tax-I, Thane .. Appellant

v/s.

M/s. Gee Square Exports .. Respondent

Mr. Ashok Kotangle a/w Mr. Prabhakar Ranshur i/b Padma Divakar for the appellant
None for the respondent

CORAM : M.S. SANKLECHA &
SANDEEP K. SHINDE, J.J.
DATED : 13th MARCH, 2018.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 31st October, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2009-10.

2. Mr. Kotangale, leaned Counsel for the Revenue urges only the following question of law for our consideration :-

> *"Whether on the facts and circumstances of the case and in law, the Tribunal was justified in holding that the assessee has fulfilled the condition laid down in Rule 6DD ignoring the fact that the conditions spelled out in CBDT Circular No.8 of 2006 is not fulfilled by the assessee?*

3. The respondent assessee is a partnership firm engaged in the business of exporting frozen buffalo meat and veal meat to countries like Oman, Kuwait and Vietnam etc. The respondent assessee purchases raw meat from various farmers and after processing and packaging in cartoons, exports the same. The respondent had in the course of its above activity, made its purchases of meat in cash in excess of Rs.20,000/-.

4. The Authorities under the Act disallowed payments made in cash for purchases of meat in excess of Rs.20,000/- i.e. Rs.26.79 crores in the aggregate under Section 40A(3) of the Act. This after rejecting the appellant's contention that in view of the proviso to Section 40A(3) of the Act read with Rule 6DD(e) and (k) of the Income Tax Rules (Rules), they would not be hit by Section 40A(3) of the Act. This rejection was primarily on the ground that in view of Central Board of Direct Taxes (CBDT) Circular No.8 of 2016, wherein in paragraph 4 thereof, one of the conditions for grant of benefit of Section 6DD of the Income Tax Rules was certification from a Veterinary Doctor certifying that the person certified in the certificate is a producer of meat and slaughtering was done under his supervision.

5. In appeal, the Tribunal held that Section 40A(3) of the Act provides that no dis-allowance thereunder shall be made if the payment in cash has been made in the manner prescribed i.e. in circumstances provided in Rule 6DD of the Rules. The impugned order holds that the payment is made to producer of meat in cash and would satisfy the requirement of Rule 6DD(e) of the Rules, which is as under :-

> *"(e) Where the payment is made for the purchase of*
> *(i) ....*
> *(ii) the produce of animal husbandry (including livestock, meat, hides and skins) or dairy or poultry firming; or"*

6. There were no other conditions to be satisfied in terms of the above Rules. This was particularly so as the impugned order of the Tribunal holds that neither the Act nor the Rules provides that the benefit of Rule 6DD of the Rules would be available only if the further conditions / requirements set out by the board in its Circular are complied with. The impugned order of the Tribunal also records the fact that the power of the board to issue circulars u/s 119 of the Act is mainly to remove hardship caused to the assessee. In the above view, it was held by the impugned order of the Tribunal that the scope of Rule 6DD of the Rules cannot be restricted and / or fettered by the CBDT Circular No.8 of 2016. In the aforesaid facts, it allowed the

respondent assessee's appeal.

7. Mr. Kotangle, learned Counsel for the Revenue states that the respondent assessee had failed to satisfy the conditions of CBDT Circular. Therefore, the impugned order of the Tribunal could not have allowed the respondent assessee's appeal.

8. We note that the basis of the Revenue seeking to deny the benefit of the proviso to Section 40A(3) of the Act and Rule 6DD(e) of the Rules is non satisfaction of the condition provided in CBDT Circular No.8 of 2016. In particular, non furnishing of a Certificate from a Veterinary Doctor. The proviso to Section 40A(3) of the Act seeks to exclude certain categories / classes of payments from its net in circumstances as prescribed. Section 2(33) of the Act defines "prescribed" means prescribed by the Rules. It does not include CBDT Circulars. It is a settled position in law that a Circular issued by the CBDT cannot impose additional condition to the Act and / or Rules adverse to an assessee. In UCO Bank Vs. Commissioner of Income Tax, 237 ITR 889 @ 898, the Apex Court has observed "Also a circular cannot impose on the taxpayer a burden higher than what the Act itself, on a true interpretation, envisages". Thus, the view of the Tribunal

that the CBDT Circular cannot put in new conditions for grant of benefit which are not provided either in the Act or in the Rules framed thereunder, canot be faulted. More particularly so as to deprive the respondent assessee of the benefit to which it is otherwise entitled to under the statutory provisions. Needless to state it is beyond the powers of the CBDT to make a legislation so as to deprive the respondent assessee of the benefits available under the Act and the Rules. The respondent assessee having satisfied the requirements under Rule 6DD of the Rules, cannot, to that extent, be subjected to disallowance under Section 40A(3) of the Act. Besides, we may in passing point out that the impugned order of the Tribunal holds that a Certificate of Veterinary Doctor was rejected by the Authorities under the Act, only because it was not in proper form.

9. In the above facts, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

10. Accordingly, the appeal is dismissed. No order as to costs.

(SANDEEP K. SHINDE, J.) **(M.S. SANKLECHA, J.)**