IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

TAX CASE (APPEAL) NO.166 OF 2011

Mr.D.S.Madiahswamy ...Appellant/Petitioner

Vs

The Income-Tax Officer
Ward 1(3)
Salem 636 007 ...Respondent/Respondent

APPEAL under Section 260-A of the Income Tax Act, 1961 against the common order dated 18.12.2009 passed by the Income Tax Appellate Tribunal, "A" Bench, Chennai in I.T.A.No.36/(MDs)/2007 for the assessment years 2003-04. against the Order of the Commissioner of Income Tax (Appeals)3, Salem dated 31.10.2006 and made in I.T.A.No.28/06-07, against the Assessment Order, dated 31.03.2006 made in PAN/GIR.No.13PMO598 of the Income Tax Officer, Ward I(3), Salem for the Assessment year 2003-04.

For Appellant : Mr.V.S.Jayakumar

For Respondent : Mr.M.Swaminathan SSC

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal filed by the assessee under Section 260-A of the Income Tax Act, 1961(the Act) is directed against the order dated 18.12.2009 passed by the Income Tax Appellate Tribunal, "A" Bench, Chennai in I.T.A.No.36/(MDs)/2007 for the assessment years 2003-04, and was admitted on 25.04.2011 on the following substantial question of law:

> "Whether the Tribunal was right in law in holding that the payments made in, Cash is to be disallowed under Sec.40A(3) even though the same was governed by contracts entered into as a matter of commercial expediency for that purpose?"

2. Mr.V.S.Jayakumar has filed this appeal as the counsel for the appellant. Today, he has appeared before us and reported no instruction, since despite hectic efforts, he is unable to contact his client. Considering the fact that this appeal is of the year 2011 and the appellant appears to be not diligent in prosecuting the matter, we proceeded to hear the Mr.M.Swaminathan, learned Senior Standing Counsel for the Revenue and take a decision on the merits of the matter.

3. The assessee is engaged in the manufacture and sale of textiles and filed his return of income for the assessment year 2003-2004 showing a total income of Rs.1,82,390/-. Though, the assessee was the proprietor of two concerns, he was able to produce the books of only one concern when called upon by the Assessing Officer.

4. In respect of a concern, for which books were not produced the Assessing Officer adopted average net profit of the preceding three years and accordingly the profit was estimated. The Assessing Officer on perusal of the cash book, which was produced in respect of one of the concern noticed cash payments exceeding Rs.20,0000/- to various concerns totalling a sum of Rs.67,95,848/- and therefore, the Assessing Officer applied Section 40A(3) of the Act and made a disallowance of Rs.13,59,169/-. Apart from that Assessing Officer noticed that there were cash payments made to seven parties totalling a sum of Rs.10,00,902/- and therefore, applied Section 40A(3) and made a disallowance of Rs.2,00,180/-.

5. The assessee filed an appeal before the Commissioner of Income Tax(Appeals), Salem (in short CIT(A)). The CIT(A) by order dated 31.10.2006 dismissed the appeal. Challenging the said order the Assessee preferred an appeal to the Tribunal. The Tribunal in the impugned order dated 18.12.2009 dismissed the appeal filed by the assessee. This has made the assessee to come before us by way of this appeal, raising the abovementioned substantial question of law.

6. As could be seen from the order passed by the CIT-(A), the Assessee in the written submission accepted the transactions and stated that it was for business purposes and not for personal reasons. The assessee's only plea was that cash payments were necessitated by a written contract and therefore, should be allowed on consideration of business necessity.

7. The CIT(A) considered other submission and took note of Rule 6DD(j) of the Income Tax Rules, 1962(in short Rules) and held that the assessee has not been able to bring his case under anyone of the conditions stipulated in the said Rule and therefore, confirmed the disallowance made by the Assessing

Officer. The correctness of the order passed by the CIT(A) was contested before the Tribunal. The Tribunal after re-examining the factual position held that the assessee has not been able to substantiate the existence of any circumstance which would call for application of Rule6DD(j) and therefore, confirmed the order passed by the CIT(A).

8. On going through the factual position, we find that the assessee himself admitted the cash payment and pleaded that there was business necessity warranting cash payment. Unfortunately, the Statute does not provide for any relief to such an assessee and if at all, the assessee should escape from the rigour of Section 40A(3), then he should bring his case within the ambit of Rule 6DD(j), which assessee was miserably failed.

9. Thus, we find there is no question of law much less a substantial question of law arising in this appeal. Accordingly, the appeal is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Income Tax Appellate Tribunal,
'A' Bench, Chennai.

2. The Commissioner of Income Tax (Appeals)3,
No.3, Gandhi Road,
Salem-636 007.

3. The Income Tax Officer,
Ward I(3), Room No.205, II Floor,
No.3, Gandhi Road, Salem-636 007.

+1cc to Mr.M.Swaminathan, Advocate, S.R.No.4924

Tax Case (Appeal) No.166 of 2011

GJ(CO)
CS/14/03/2019