

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2019

Date of Reserving the Order	Date of Pronouncing the Order
17.12.2018	04.01.2019

CORAM

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

Tax Case (Appeal) No.946 of 2018

Shri.Natesan Krishnamurthy ... Appellant

-vs-

The Income Tax Officer
Non-Corporate Ward 9(2),
Chennai - 600 034. ... Respondent

Tax Case (Appeal) filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income-tax Appellate Tribunal, "B" Bench, Chennai, dated 20.06.2018, passed in I.T.A.No.1672/CHNY/2017 for the assessment year 2013-14, against the order dated 23/05/2017 passed by the Commissioner of Income Tax (Appeals)-10, Chennai in ITA No.23/CIT(A)-10/2016-17 against the Assessment order passed by the Income Tax Officer, Non Corporate Ward 9(2), Chennai for the Assessment Year 2013-14 dated 30.03.2016 in PAN/GA No.ANCPK263AB.

For Appellant : Mr.R.Sivaraman

For Respondent : Mr.Karthik Renganathan
Standing Counsel

JUDGMENT

(Judgment was delivered by T.S.Sivagnanam, J.)

This appeal by the appellant filed under Section 260A of the Income Act, 1961 (the Act for brevity) is directed against the order of the Income-tax Appellate Tribunal, "B" Bench, Chennai, dated 20.06.2018, passed in I.T.A.No.1672/CHNY/2017 for the assessment year 2013-14.

2.The appeal has been filed raising the following substantial questions of law:-

"1) Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that the cash transactions amounting to Rs.34,68,15,452/- were not allowable under Section 40A(3) of the Act?

2) Whether the Appellate Tribunal was right in disallowing the expenditure even though both the payee and payer are identified and the TCS has been collected by the seller?

3.The assessee, an individual, filed his return of income for the assessment year under consideration (2013-14) on 30.11.2014 admitting a total income of Rs.9,23,600/-. The case was selected for scrutiny and notice under Section 143(2) of the Act was issued on 02.09.2014. On 31.03.2015, the assessee filed a revised return of income without any change in the total income admitted in his original return dated 30.11.2014. The assessee was called upon to furnish a copy of return of income, financial statements, books of accounts, etc. In response to the same, the assessee through his authorized representative filed the copy of the return, financial statements, audit report, bank statement and a copy of 26AS statement. The Assessing Officer observed that the assessee had purchased gold jewellery worth Rs.34.68 Crores by way of cash in the auction conducted by M/s.Manapuram Finance Ltd. In the original e-return filed by the assessee, he had admitted Rs.6,66,134/- as sales/gross receipts in the P&L Account, whereas in the revised e-return filed by the assessee, he had admitted Rs.34,74,81,586/- as sales/gross receipts in the P & L Account for the financial year 2012-13 relevant to the assessment year 2013-14 (year under consideration). The assessee was asked to clarify as to how such huge purchase could be done when the source admitted in the return of income, i.e. capital of the assessee and sundry creditors were at Rs.22,67,797/- and Rs.20,00,000/-. The assessess stated that a group of bidders formed a syndicate and participated in the auction and after successful bidding, money from the prospective purchasers are collected and the same is remitted to M/s.Manapuram Finance Ltd. and on this transaction, the Finance Company collected 1% tax at source. The assessee further submitted that the Company had received only a document in support of his claim.

4.The Assessing Officer referred to Section 40A(3) of the Act stated that the assessee had made cash payments in excess of Rs.20,000/- towards purchase of old gold ornaments through bidding process from the said Finance Company and the said provision is squarely attracted to the assessee's case and accordingly issued show cause notice dated 18.03.2016. The assessee submitted a reply stating about the nature of transaction done by him, how a syndicate of bidders ranging from 10 to 25 persons would be formed and after successful bidding by the assessee, he will collect from each of the members of the syndicate and will distribute the gold according to the payments collected from them and will be taken as sales in the assessee's account as the Finance Company has raised invoice in the name of the assessee and accordingly tax was deducted at source which was shown as purchase in the assessee's account. Further the assessee would stated that the Finance Company insisted payment by cash only and that is why payments were made as cash considering the business expediency. The assessee further stated that the provisions of Section 40A(3) of the Act are not applicable in respect of the transactions covered by the provisions of Rule 6DD of the Income Tax Rules, 1962 (hereinafter referred to as "the Rules"). The Assessing Officer held that the assessee is not covered by any of the clause of Rule 6DD of the Rules and hence, the cash purchase made by the assessee to the tune of Rs.34,68,15,452/- was disallowed as per the provisions of SEction 40A(3) of the Act and added to the total income admitted by the assessee. Accordingly, the Assessing Officer by order dated 30.03.2016 completed the assessment under Section 143(3) of the Act and computed the tax payable at Rs.16,15,29,170/-.

5.The assessee filed an appeal before the Commissioner of Income Tax (Appeals)-10, Chennai (CITA). The assessee reiterated the stand taken before the Assessing Officer and contended that the Assessing Officer did not look into the surrounding circumstances, consideration of business expediency, exceptional and unavoidable circumstances while making cash payments by the assessee at the insistence of the payee. The assessee further stated that when the payee and payer are identified and the genuineness of the payments were established, the amount paid by cash could not be disallowed. In support of such claim, the assessee placed reliance on the decision of this Court in the case of Commissioner of Income Tax vs. Chrome Leather Co. Pvt Ltd. reported in 235 ITR 708. The assessee also referred to the other decisions of the other High Courts ad the Hon'ble Supreme Court to justify his stand. The CITA by order dated 28.11.2016 dismissed the appeal and in doing so held that Section 40A(3) of the Act is applicable to the facts and circumstances of teh assessee's case and teh assessee could not

establish that he comes under the exempted categories listed under Rule 6DD of the Rules. As against the said order, the assessee preferred an appeal to the Tribunal contending that the terms of auction normally required the highest bidder to deposit a part of the bid amount immediately on announcement of the successful bidder and the assessee was compelled to make the payment in cash. The contention advanced before the Assessing Officer and the CITA regarding the formation of syndicate was once again reiterated before the Tribunal. Further, it was contended that the various contingencies mentioned in Rule 6DD of the Rules are not exhaustive but only illustrative. Further it was contended that if the assessee was able to establish that there existed circumstances to show requirements of paying in case, Section 40(3) of the Act could not be applied. The Tribunal by the impugned order dated 26.05.2017 dismissed the assessee's appeal. This is how the assessee is before us by way of this tax case appeal raising the substantial questions of law mentioned above.

6.Mr.R.Sivaraman, learned counsel for the appellant/assessee while reiterating the stand taken by the assessee before the Tribunal contended that the Tribunal erred in law holding that the expenditure incurred by the assessee does not fall under the ambit of business expediency under Section 40A(3) of the Act, especially, when the transaction entered into by the assessee was genuine and the parties are identifiable. Further, the other factual aspects which were pointed out by the assessee before the Assessing Officer, the CITA and the Tribunal were highlights by the learned counsel. The method of transaction was explained and as to how the highest bidder should immediately deposit part of the auctioned amount with the auctioneer and since the assessee would not know as to how much amount has to be deposited, no bank draft could be obtained by the assessee. Therefore, it is contended that Section 40A(3) of the Act would not be attracted.

7.Mr.Karthik Ranganathan, learned Standing Counsel for the revenue sought to sustain the orders passed by the Assessing Officer as confirmed by the CITA and the Tribunal by referring to the findings recorded by the authorities and the Tribunal and pointed out that there is no substantial questions of law arising for consideration in this appeal and prayed for dismissal of the appeal.

8. We have heard the learned counsels for the parties and carefully perused the materials placed on record.

9. Firstly we may point out that the dispute in the instant case revolves entirely on facts. The nature of transaction as propounded by the assessee before the Assessing Officer is that several persons joined together and formed a syndicate and on behalf of the syndicate, the assessee bids in the auction conducted by the Finance Company which sells the old gold ornaments. It is the further case of the assessee that as soon as the auction is confirmed, the highest bidder has to remit part of the amount in cash and the amount which has to be paid is not known to the assessee earlier and therefore, the payments cannot be made through banking channel. In our considered view, the Assessing Officer rightly examined the nature of transaction done by the assessee and on facts was not convinced that the assessee would fall under any one of the exceptional clauses under Rule 6DD of the Rules. The assessee reiterated the same stand before the CITA. The CITA examined the nature of transaction considered, various decisions cited by the assessee and found that Section 40A(3) of the Act applies with full force to the facts of the assessee's case. Once again before the Tribunal, the facts were re-examined and the Tribunal pointed out that the assessee failed to demonstrate that the conditions of the bid required the assessee to effect payments in cash then and there and payments could not have been made by cheque or Demand Draft or any other mode. The Tribunal pointed out that there is no explanation as to what stopped the assessee from effecting payments through banking channel. Further, the Tribunal found that the agreement with syndicate members, if any, was not produced by the assessee before the lower authorities or before the Tribunal. Further the Tribunal held that the assessee could not demonstrate that he was representing any syndicate nor he could demonstrate that he was collecting cash from such syndicate members for making payments to the Finance Company. The decisions of the Tribunal cited by the assessee were distinguished by analysing the facts of those cases. The Tribunal held that the assessee was unable to demonstrate a situation which compelled him to make payment in cash which would have exempted him from application of recourse of Section 40A(3) of the Act.

10. Thus, we find that the authorities below and the Tribunal appreciated and re-appreciated the factual position and took a decision against the assessee. In this appeal, we cannot be

called upon to once again re-appreciate the facts as if we are the third appellate authority over the decision of the Tribunal. Thus, we find that there are no questions of law, much less substantial questions of law arising for consideration in this appeal. Accordingly, the tax case appeal fails and hence, dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Income-tax Appellate Tribunal,
"B" Bench, Chennai.
- 2.The Income Tax Officer,
Non-Corporate Ward 9(2),
Chennai-34.
- 3.The Commissioner of Income Tax,
Appeals (10), Chennai.

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