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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **ITA 91/2006**

COMMISSIONER OF INCOME TAX DELHI - X ..... Appellant

Through: Mr.Raghvendra K Singh, Senior Standing Counsel with Mr.Vipul Agrawal, Advocate.

versus

MRS. KRISHNA GUPTA ..... Respondent

Through: None.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

<u>O R D E R</u>

% **08.08.2019**

1. The Revenue is in appeal against an order dated 14thDecember, 2004 of the Income Tax Appellate Tribunal in ITA No. 2781/Del/1999for the Assessment Year (AY) 1993-94. While admitting this appeal on 24th November, 2006, the following question of law is framed for consideration:

> "Whether the Order of the ITAT is perverse in the facts of the present case and the provisions of Section 40A(3) of the Income Tax Act as well as Rule 6-DD (j) of the Income Tax Rules, 1962 have been wrongly interpreted ?"

2. The facts in brief are that the Assessee, as the proprietor of M/s. Studio Saket, filed a return of income on 3rd January, 1994 declaring an income of Rs.5,19,440/-. The Assessing Officer (AO) picked up the return for scrutiny and sent notices to the Assessee asking her to furnish information in respect of the trading results declared the profit and loss account in various items of liabilities and assets as appearing in the balance sheet. *Inter alia*, on examining the accounts, the AO found that substantial cash payments had been made towards purchases. In particular, the Assessee was shown to have made cash purchases in the total sum of Rs.1,62,24,491/- from three parties as under:

(i) M/s Durga Photo Sales	Rs.36,06,251/-
(ii) M/s. Hearing House	Rs.92,57,640/-
(iii) M/s. India Photographers	Rs.33,60,600/-

3. The Assessee was asked to explain the justification for making the above cash purchases, which was in contravention of Section 40-A (3) of the Act. The AO was not satisfied with the explanation and accordingly added the above amount to the income of the Assessee.

4. The Assessee then appealed to the Commissioner of the Income Tax (Appeals) [CIT(A)].By the order dated 31st March, 1999, while allowing the appeal of the Assessee, the CIT(A) noted that by letters dated 1st December, 1997, two of the parties i.e. M/s Hearing House and M/s Durga Photo Sales by letters dated 12th June, and 1st December 1997 respectively confirmed that they

had sold goods to the Assessee on cash payment only as per their invoices of sales. As far as M/s Usha Photographers was concerned, they too filed a letter dated 26th December, 1997 confirming the account and certifying that they had insisted on cash payments for sales in the month of April, 1992, since the Assessee had just started dealing with it and the facility for making payments by cheque was subsequently extended after being satisfied about the stability of the operations of the Assessee.

5. Before the CIT (A), a copy of an earlier letter dated 5th June, 1996 of M/s Kodak India, confirming purchases and receipt of payments in cash was also placed on record. Since these documents were brought on the record afresh before the CIT (A), they were forwarded to the AO for his comments in terms of Rule 46 A of the Income Tax rules. The AO maintained that the genuineness of the purchases has not been established, and that, therefore, the evidence brought on record was an afterthought and should not be accepted.

6. The CIT (A) noted that the Assessee was a wholesaler in photographic goods, which have the characteristic of a short shelf life. On account of the expiry date, goods were required to be lifted on payment to avoid the risk of loss. It was further noted that the Assessee had maintained a record of purchases from the aforementioned parties and that they too had confirmed having made cash sales to the Assessee. The CIT (A) was satisfied that this constituted an exceptional circumstance as envisaged in the Rule 6 DD (j) of

the Income Tax Rules, 1962 ('Rules') and, therefore, the above disallowance was deleted.

7. The Revenue then carried the matter in appeal to the ITAT, which by the impugned order agreed with the CIT (A) and dismissed the appeal of the Revenue. The reasoning of the ITAT on this issue is contained in para 6 of the impugned order, which reads as under:

> "6. We have duly considered the rival contentions and the material on record. One of the main objections of the learned DR was with regard to the additional evidence admitted by the CIT (Appeals). These evidence were in the form of letters were forwarded to the Assessing Officer for his comments in terms of Rule 46-A of the IT Rules. Next, it needs to be appreciated that this was the first year of assessee's business. Therefore, there was all the more reason for the suppliers to insist for cash payments. Besides this, the explanation that the nature of goods also compelled the suppliers to make cash sales appears to be quite plausible. In addition to all these facts, the parties have confirmed the sales made to the assessee and also about the insistence for cash payment. Another point which was stressed upon by the learned DR was that the purchases were not genuine as was evident from the fact that M/s. Durga Photo Sales and M/s. Hearing House were not assessed to tax. However, it has not been appreciated by the Assessing Officer that for these two firms also it was their first year of business. Thus, this argument of the learned DR has also no force. Considering all these facts, we are of the view that the CIT (Appeals) was justified in deleting the disallowance and hence we uphold his order on this issue."

8. Learned counsel for the Revenue pointed out that one of the grounds on which the Revenue preferred the present appeal was that the audit report furnished by the Assessee in the course of the assessment proceedings revealed that in the accounts, cash purchases were mentioned as 'nil', while the Assessee had shown cash purchases which more than Rs.1.62 lakhs.

9. However, on perusing the impugned orders of the AO and the CIT (A) or even that of the ITAT, the Court is not able to find such a plea having been raised by the Revenue before those authorities. In any event, if the AO had a doubt about the genuineness of the above purchases, the AO could have summoned one or all of those three parties and asked them questions in relation to the confirmation letters, to satisfy himself that the contents thereof were, in fact, based on actual purchases for which cash was paid by the Assessee. He could have asked them to produce their books of accounts, bill books, etc.

10. On its part, the Assessee appears to have made the effort of producing the confirmation letters from the three parties before the CIT (A) and it was on that basis the CIT (A) rendered the factual finding that the Assessee was constrained to make the cash purchases due to 'exceptional or unavoidable circumstances', as envisaged in 6 DD (j) of the Rules.

11. The Court is unable to find any legal infirmity in the impugned order of the CIT (A), which has been confirmed by the ITAT in the order under appeal.

Consequently, the question of law is answered in the negative, i.e. in favour of the Assessee and against the Revenue.

12. The appeal is accordingly dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 8, 2019
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