

ITAT/170/2014
IA No.GA/1/2014 (Old No.GA/3405/2014)

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

COMMISSIONER OF INCOME TAX,
KOLKATA-II, KOLKATA

-Versus-

BHARTIYA HOTELS LTD.

Appearance:

Mr. Aryak Dutta, Adv.
...for the appellant/revenue.

Mr. Rishi Raju, Adv.
Mr. Soumyajyoti Nandy, Adv.
Mr. Deepankar Thakur, Adv.
Mr. Ashutosh Singh, Adv.
...for the respondent/assessee.

BEFORE:

The Hon'ble JUSTICE T.S. SIVAGNANAM

-And-

The Hon'ble JUSTICE BIVAS PATTANAYAK

Date : 5th July, 2022.

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity) is directed against the order dated 16th June, 2014 passed by the Income Tax Appellate Tribunal "Third Member" Case (A): Kolkata (in short the 'Tribunal') in ITA No.941/Kol/2011 for the assessment year 2007-08.

The revenue has raised the following substantial questions of law for consideration:

- i) Whether on the facts and circumstances of the case the Tribunal was justified in law to uphold the views of the Administrative Member holding, inter alia, that the provision of Section 40A(3) of the said Act could not be invoked?*
- ii) Whether on the facts and circumstances of the case the Tribunal was justified in not appreciating the views of the judicial member who rightly held that section 40A(3) is applicable in case where issue involved is 'payments made otherwise than by an A/c Payee Cheque or bank draft' and not 'payment made in a sum' in worth mentioning?*

We have heard Mr. Aryak Dutta, learned counsel for the appellant and Mr. Rishi Raju, learned Counsel assisted by Mr. Soumyajyoti Nandy, Mr. Deepankar Thakur and Mr. Ashutosh Singh Advocates for the respondent/assessee.

The short question involved in the instant case is whether the provisions of Section 40A(3) of the Act would stand attracted to the transaction effected by the assessee. The facts as noted by the assessing officer were that the assessee had purchased stock in trade over them by account payee cheque drawn on a bank or account payee bank draft and, therefore, provision of

Section 40A(3) of the Act is attracted. The assessee was on appeal before the Commissioner of Income Tax (Appeals)-VIII, Kolkata [CIT(A)]. By an order dated 24th March, 2011, the CIT(A) allowed the assessee's appeal, after examining the nature of transaction and held that the assessing officer was not justified in considering the property in question to be stock in trade for the assessment year under consideration and, consequently, Section 40A(3) could not be attracted. The revenue carried the matter on appeal to the tribunal. The learned administrative member of the tribunal agreed with the CIT(A) whereas the learned judicial member took a different view. Consequently, the learned President of the tribunal exercised power under Section 255(4) of the Act and referred the matter to the learned third member to decide the question as to whether in the facts and circumstances of the case, the provisions of Section 40A(3) could be invoked or not. The learned third member had elaborately discussed the facts and took note of the findings recorded by the learned administrative member while affirming the findings of the CIT(A). After noting the object behind introduction of Section 40A(3), it was held that when an expenditure is incurred for which payment is not made in cash or monetary terms, the provisions will have no application. The learned third member took note of the fact that the learned judicial member who opined that the word "payment" occurring in Section 40A(3) of the Act has to be given a very wide meaning.

The learned third member pointed out that the word "payment" has to be read in conjunction with the expression "in a sum exceeding 20,000 rupees" as contained in Section 40A(3) of the Act. That apart, the nature of transaction done by the assessee was also examined on facts and it has not been disputed by the revenue that there was cash transaction done by the assessee in excess of Rs.20,000/-. The learned administrative member had taken note of the decision of the High Court of Kerala in the case of Commissioner of Income Tax (Appeals) vs. Muthoot Brothers reported in 247 ITR 27 (Ker.). With regard to the decision in the case of Attar Singh Gurmukh singh vs. ITO reported in 191 ITR 667 (SC) which was referred to by the learned judicial member, as rightly pointed out by the learned Advocate appearing for the respondent/assessee, in the said case, admittedly payments were made in cash exceeding a sum of Rs.2500/-. In the background of those facts, the Court had rendered a decision holding that cash payment exceeding prescribed limit would attract Section 40A(3) of the Act. Therefore, the said decision is distinguishable on facts. Learned Advocate appearing for the respondent/assessee placed reliance on the decision of the High Court of Gujarat in the case of CIT-III vs. Dinesh Kumar Chandmal Jain reported in [2014] 42 taxmann.com 155 (Guj.) In the said case, the assessing officer found that the assessee had paid an amount of Rs.18.22 crores in cash to six parties and disallowed 20% of such payment

under Section 40A(3). However, the assessing officer was not in a position to actually prove that payment was made in cash, and, therefore, the said disallowance was set aside by the tribunal and the order passed by the tribunal was confirmed by the Hon'ble Division Bench in the case of *Dinesh Kumar Chandmal Jain (supra)*. In fact, on facts, the case on hand is in a better footing as the revenue does not state that any cash transaction took place.

Considering the facts and circumstances, we find that there is no perversity in the order passed the learned third member of the tribunal agreeing with the learned administrative member of the tribunal.

For the above reasons, the appeal (ITAT/170/2014) fails and the same stands dismissed. The substantial questions of law are answered against the revenue.

Consequently, the connected application for stay (IA No.GA/1/2014) also stands closed.

(T.S. SIVAGNANAM, J.)

(BIVAS PATTANAYAK, J.)