

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.288 of 2017

1. The Principal Commissioner of Income Tax I I, Patna
2. The Income Tax Officer, Ward 4(1), Patna.

... .. Appellant/s

Versus

Ambika Prasad Gupta, Sri Ram Market, Mithapur, Patna (PAN No. ACUPG 0383Q).

... .. Respondent/s

with

Miscellaneous Appeal No. 826 of 2017

1. The Principal Commissioner of Income Tax -11, Patnas
2. The Income Tax Officer Ward 4 (1) Patna.

... .. Appellant/s

Versus

Ambika Prasad Gupta, Sri Ram Market, Mithapur, Patna (PAN No. ACUPG 0383Q).

... .. Respondent/s

Appearance :

(In Miscellaneous Appeal No. 288 of 2017)

For the Appellant/s : Mrs. Archana Prasad, Sr. S.C.

For the Respondent/s :

(In Miscellaneous Appeal No. 826 of 2017)

For the Appellant/s : Mrs. Archana Prasad, Sr. S.C.

For the Respondent/s :

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-07-2024

The above two appeals are respectively from the assessment years 2009-10 and 2010-11. The order impugned in MA No. 288 of 2017 was followed by the Tribunal in MA No. 826 of 2017. We, hence, first look at the order impugned in MA No. 288 of 2017, which would dispose the other appeal also.

2. Notice was issued to the respondent, which was



received, but there was none appearing for the respondent. After the notice was issued when the matter was posted on 24.06.2024, we adjourned the same to 22.07.2024, awaiting appearance of the respondent. Today also, when the matter was taken up, there was no appearance in which event, we proceeded to dispose of the matter after hearing the learned Senior Standing Counsel appearing for the Department.

3. The question of law is framed as follows:-

- (1) Whether the Tribunal was right in finding that on mere submission of the assessee that amounts paid to his suppliers, were deposited in the accounts maintained by them, accompanied by production of pay-in-slips, there was substantial compliance of Section 40A(3) of the Income Tax Act?
- (2) Whether the order of the Tribunal is against the specific provisions of Section 40A(3) read with Rule 6DD of the Income Tax Rules and is not the order perverse?

4. The assessee was a trader of vegetables mainly of onions, which are purchased from traders in Maharashtra. The payments to the purchasers were mostly made in cash and it exceeded Rs. 20,000/- on a single day. The contention of the assessee was that the cash amounts were deposited in the bank branches at Patna. Admittedly, the single day transactions exceeded Rs. 20,000/- limit, as prescribed under Section 40A(3) at that point of time. It was also the submission of the assessee



that he trades in agriculture produce, which are bought by the parties based at Manmad in Maharashtra directly from farmers who are paid in cash. The traders, according to the assessee; the respondent herein, are the agents of the farmers and hence, the exemption under Rule 6DD is applicable.

5. The Assessing Officer specifically noticed the submission of the assessee that Section 40A(3) is to curb wasteful and lavish expenditure in business and to check growth of black money, which is more than substantially met by the cash payments made. The assessee also produced copies of the pay-in-slips with respect to the amounts deposited in the bank accounts of the parties. The pay-in-slips with respect to the cash amounts deposited in various accounts, were in fact impounded by the Investigation Wing of the Department, the photocopies of which were produced by the assessee.

6. The Assessing Officer found that there was no payment made, as provided under Section 40A(3), by payee cheques or account payee bank drafts.

7. The reliance placed on *Attar Singh Gurmukh Singh vs. Income Tax Officer,(1991) 191 ITR 667 (SC)* was held to be not applicable, since it only upheld the validity of Section 40A(3) read with Rule 6DD. The exemption under Rule



6DD(e) & (k) were held to be inapplicable.

8. The First Appellate Authority found that the payments made into the account of the traders was evidenced by the pay-in-slips and this would satisfy the object of Section 40A(3). The Tribunal concurred with the First Appellate Authority insofar as the object of Section 40A(3) having been satisfied. The Tribunal found that the exemption to Rule 6DD is not available. The Tribunal, to support its finding also relied on the CBT Circular-6P dated 06.07.1968, which stated that “the provision under Section 40A(3) is designed to counter evasion of a tax through claims for expenditure shown to have been incurred in cash with a view to frustrating proper investigation by the department as to the identity of the payee and reasonableness of the payment”(sic). We find that the said circular would only buttress the case of the Department and go against the assessee.

9. We also notice the extract made from *Attar Singh Gurumukh Singh* (supra), which reads as under:-

Section 40A(3) of the Income-tax Act, 1961, which provides that expenditure in excess of Rs.2,500 (Rs. 10,000 after the 1987 amendment) would be allowed to be deducted only if made by a crossed cheque or crossed bank draft (except in specified cases) is not arbitrary and does not



amount to a restriction on the fundamental right to carry on business. If read together with Rule 6DD of the Income-tax Rules, 1962, it will be clear that the provisions are not intended to restrict business activities. There is no restriction on the assessee in his trading activities. Section 40A(3) only empowers the Assessing Officer to disallow the deduction claimed as expenditure in respect of which payment is not made by crossed cheque or crossed bank draft. The payment by crossed cheque or crossed bank draft is insisted upon to enable the assessing authority to ascertain whether the payment was genuine or whether it was out of income from undisclosed sources. The terms of section 40A(3) are not absolute. Consideration of business expediency and other relevant factors are not excluded. Genuine and bona fide transactions are not taken out of the sweep of the section. It is open to the assessee to furnish to the satisfaction of the Assessing officer the circumstances under which the payment in the manner prescribed in section 40A(3) was not practicable or would have caused genuine difficulty to the payee. It is also open to the assessee to identify the person who has received the cash payment. Rule 6DD provides that an assessee can be exempted from the requirement of payment by a crossed cheque or crossed bank draft in the circumstances specified under the rule. It will be clear from the



provisions of section 40A(3) and rule 6DD that they are intended to regulate business transactions and to prevent the use of unaccounted money or reduce the chances to use black money for business transactions."

10. There is no dispute that the limit provided in the relevant assessment years as per Section 40A(3) was Rs. 20,000/- and that the assessee had made payments in a single day, far exceeding the above limit, to 13 traders, the names of whom are indicated in a tabular form in the order of assessment produced as Annexure-1. Section 40A(3) mandates that any expenditure in respect of which a payment is made to a person in a day, other than by an account payee cheque drawn on a bank or account payee bank draft, shall not be allowed as a deduction under the Income Tax Act. The circular referred to hereinbefore also speaks of the provision being a measure to counter evasion of tax through claims made of fictional expenditure.

11. What is relevant would be the exigibility to tax of the cash, which is claimed as an expenditure by the assessee. The identity of the payee is very relevant in such cases and merely because cash has been deposited to the accounts, that would not prove that it was against the purchase made and that



the recipient of such payment was an actual trader of the goods purchased.

12. *Attar Singh Gurumukh Singh* (supra), as per above extract, held that the provision insisted for payment by crossed-cheque or crossed-bank draft to ascertain whether the payment was genuine or whether it was income from undisclosed sources. True, it has been held that genuine and bona fide transactions was held to be not taken out of the sweep of the section; which had to be proved by the assessee to the satisfaction of the Assessing Officer. It is also required that the assessee identify the person who has received the cash payment.

13. In the present case, there was no identity of the trader/person who supplied to the Assessing Officer, nor were any invoices produced before the Assessing Officer to prove a corresponding purchase made, based on the deposits made in various accounts. Admittedly, the traders were all located in Maharashtra and it is not clear as to why they maintained an account in Patna.

14. We find absolutely no reason to uphold the order of the Tribunal, especially considering the fact that there was no proof of genuineness of the transactions or the identity of the account holders. The order of the Tribunal is perverse and



against the rigour of Section 40A(3). The pay-in-slips alone would not substantiate the case of the assessee of, a genuine transaction made to a genuine seller/supplier.

15. In the above circumstance, we answer the question of law in favour of the Revenue and against the assessee, setting aside the order of the Tribunal impugned in MA No. 288 of 2017.

16. In MA No. 826 of 2017, payments were made to 39 traders, as is indicated from the tabular form in the assessment order produced as Annexure-2. On the same reasoning the order of the Tribunal impugned in MA No. 826 of 2017 is also set aside as perverse, answering the question of law in favour of the Revenue and against the assessee as has been done in the first case.

17. The appeals stand allowed.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree.

(Partha Sarthy, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	22.07.2024
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Transmission Date	

