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T.C.A.No.432 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

T.C.A.No.432 of 2013

Shri Arasappan Madhivanan
Prop. Of M/s. Sakthi Enterprises,
No.43, West Jones Road,
Saidapet, Chennai – 600 015.
PAN : AFYPM 1604D

.. Appellant

VS

The Income Tax Officer,
Business Ward – IV (2),
Chennai.

.. Respondent

Prayer : Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'B' Bench, Chennai dated 11.06.2013 in ITA No.704/MDS/2013 for assessment year 2009 – 10.

For Appellant : Mr.A.S.Sriraman

For Respondent : Mr.J.Narayanaswamy
Senior Standing Counsel

JUDGMENT

(Delivered by Dr. ANITA SUMANTH.,J)

The assessee / appellant has filed this tax case appeal challenging an order of the Income Tax Appellate Tribunal (Tribunal / ITAT) in relation



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to assessment year (AY) 2009 – 10 dated 11.06.2013.

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2. The submissions of Mr.A.S.Sriraman appearing for the appellant are as follows:-

(i) The appellant is in the business of wholesale milk distribution of Aroky Milk to dealers for Hatsun Agro Products Limited (hereinafter referred to as 'Company').

(ii) A return of income had been filed for AY 09-10, which was processed initially under Section 143(1) and thereafter taken up for scrutiny.

(iii) In the course of assessment, the appellant's accounts were verified and it was found that cash payments in excess of Rs.20,000/- as stipulated under Section 40A(3) of the Income-Tax Act, 1961 (Act) had been made on various dates.

(iv) The smallest of the payments was a sum of Rs.1,05,000/- and the largest, a sum of Rs.12,36,100/-. On average, each payment ranged between Rs.5 - Rs. 6 lakhs totalling, in all a sum of Rs.1,11,13,675/-. The appellant was thus put to notice that the provisions of Section 40A(3) will be invoked.

(v) In response, reiterated before us by Mr.Sriraman, the appellant had stated that the exclusion under Rules 6DD(e)(ii) of the Income Tax Rules (Rules), 1962 would apply. Overriding the submissions made, the assessment was completed and disallowance as proposed was made, as against which a first appeal was filed.

(vi) The appellant succeeded in first appeal, where the appellate authority



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accepted the contentions that Rule 6DD(e)(ii) and 6DD(i) would apply to his benefit. The former relates to those payments made for the purchase of the produce of animal husbandry or poultry farming and the latter relates to those situations where the payments had been made by any person to his agent who was required to make payment in cash for goods and services on behalf of such person.

3. Before us, learned counsel for appellant would accede to the position that clause (j) of Rule 6DD is inapplicable in the present case and that line of argument is not pursued.

4. Assailing the order of the Commissioner of Income Tax (Appeals), an appeal was filed by the Revenue before the ITAT. The Tribunal held that the Rules do not benefit an assessee who had made payment to a company, as a company is neither a cultivator, grower or producer of milk. They noted that the payee i.e., was a Company and hence the transaction would not come under the protection of Rule 6DD at all. As against the adverse order of the Tribunal, the assessee is in appeal before us.

5. Learned counsel for appellant would reiterate the contentions made before the lower authorities, that the appellant would be entitled to the full benefit of 6DD(e)(ii) as, according to him, the Company is engaged in production of milk. To this end, he would rely on two decisions of this Court in *Tamil Nadu Cooperative Milk Producers' Federation Ltd vs State of Tamil Nadu* [Tax Case (Revision) No. 1149 of 2006 dated



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20.07.2012], and *Chettinad Builders v the Deputy Commissioner of Income Tax, Corporate Circle 1(2), Chennai* in TCA No.261 of 2017 dated 08.08.2017 as well as of the Calcutta High Court in the case of *Principal Commissioner of Income-Tax v Standard Leather (P) Ltd* [442 ITR 177].

6. In the first case, the question that arose was whether the conversion of raw milk to pasteurized milk would amount to manufacture or production, and that question was answered in affirmative. It is hence argued that, as the Company was engaged in purchase of milk from dairy farmers and thereafter pasteurizing the same, which amounted to production of milk, it was the pasteurized milk that had been purchased by the appellant. Hence the purchases were from a producer of milk, satisfying the requirement of Rule 6DD(e)(ii).

7. The other two decisions are on the general proposition that the conversion of one commodity into another which is commercially distinct from the former, would amount to 'manufacture' or in this case 'production' of pasteurised milk.

8. Learned counsel would point out that the disallowances effected have led to great prejudice and hardship to the appellant. The Supreme Court in the case of *Attar Singh Gurmurkh Singh v Income Tax Officer* [191 ITR 667], while upholding the vires of Section 40A(3), had made it clear that the provision was meant to be invoked only in those cases involving black money transactions. According to him, the present transactions are above board and transparent, and hence section 40A(3)



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is not applicable to the same. He would hence urge that the order of the Tribunal be reversed and the order of the CIT (Appeals) be restored.

9. Mr.J.Narayanaswamy, learned Senior Standing Counsel, would rely on the provisions of Section 40A(3), arguing that the exclusions are not attracted in the present case, and hence there is no necessity to advert to the same. Both the entities are situated within urban limits and have full access to banking facilities. The exclusions provided under Rule 6DD target those situations where either the payments are made to the Government or to a recipient situated in a rural area or one engaged in specific activities, such as animal husbandry, dairy or poultry farming or fish or fish products, horticulture or apiculture who is the cultivator, grower or producer of the aforesaid articles, produce or products. The other instances mentioned in Rule 6DD also contemplate identical scenarios. Hence there is no error in the approach of the assessing authority and the tribunal is right in reversing the order of the CIT (Appeals).

10. For his part, he would rely on the decision of the Himachal Pradesh High Court in the case of *Chanchal Dogra v Income Tax Officer* [2013 (33) Taxmann.com 394] where the question related to whether payments made to a co-operative union would stand exempted from the rigour of Section 40A(3). The question was answered in the negative, the Court holding that a co-operative union would not be a producer of milk.

11. We have heard the rival contentions and studied the relevant



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material before us as well as the case law cited.

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12. The substantial questions of law raised for decision are as follows:-

"i) Whether the Appellate Tribunal is correct in Law in sustaining the order of the Respondent in making the addition of Rs.1,11,13,675/- after disallowing the cash payments exceeding Rs.20,000/- for procurement of milk/milk products on the application of Section 40A(3) of the Act even though the proviso below the Section 40A(3A) of the Act carved out exception(s) in making such cash payments for commercial consideration/business expediency?

ii) Whether the Appellate Tribunal is correct in law in sustaining the action of the Respondent in adding back Rs.1,11,13,675/- representing cash payments exceeding Rs.20,000/- for procurement of milk/milk products after making the disallowance under Section 40A(3) of the Act on the misreading of the exceptions given in the form of illustrations under Rule 6DD of the Income Tax Rules, 1962 in the extension of the proviso below the section 40A(3A) of the Act, which provisions exempted/excluded the Appellant from the rigours of the main section 40A(3) of the Act?

(iii) Whether the Appellate Tribunal is correct in law in sustaining the action of the Respondent in disallowing the cash payments exceeding Rs.20,000/- for procurement of dairy products from the producer of milk/milk products by recording a perverse finding of fact in treating the producer as a manufacturer even though there was no distinction drawn statutorily in the said sub rule SDD(E) of the Income Tax Rules, 1962?"

13. Section 40A(3) was inserted with the specific object of reducing cash transactions and to serve this purpose limits were imposed from time to time in excess of which, assessee shall not deal in cash.



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Recognising the working of the economy, particularly, the rural sector, Rule 6DD was introduced providing for certain exemptions from the rigour of Section 40A(3). In the present case, the appellant relies specifically on Rule 6DD e(ii), which is extracted below:-

6DD. Cases and circumstances in which a payment or aggregate of payments exceeding ten thousand rupees may be made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as prescribed in rule 6ABBA.

...

(e)where the payment is made for the purchase of —

(i) agricultural or forest produce; or

(ii) the produce of animal husbandry (including livestock, meat, hides and skins) or dairy or poultry farming; or

(iii) fish or fish products; or

(iv) the products of horticulture or apiculture, to the cultivator, grower or producer of such articles, produce or products;

..."

14. The material facts are more or less admitted. The two entities engaged in the subject transaction are a milk distributor based in the city (the appellant) and a Company. The appellant claims that the Company purchases milk from farmers, and that it pasteurises and sells the pasteurised milk to the appellant/distributor for onward sale by the appellant to dealers of the Company. This, admittedly, is the structure of



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the transaction.

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15. Section 40A deals with expenses or payments not deductible in certain circumstances, and states that where expenditure is incurred in excess of a sum of Rs.10,000/- in cash, no deduction would be available in respect of such expenditure. The proviso thereunder reads as follows:-

"Where the assessee incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, or use of electronic clearing system through a bank account [or through such other electronic mode as may be prescribed], exceeds ten thousand rupees, no deduction shall be allowed in respect of such expenditure."

16. Upon a consideration of Section 40A, particularly 40A(3) and the proviso thereunder, we are of the considered view that the subject transaction would come squarely within the sweep of that provision. Rule 6DD contemplates various situations where remittances may be made by cash. However, it does not exclude a situation where the cash payment is made by a city-based entity to a Company, as in the present case.

17. Reliance on the term 'producer' in Rule 6DD(e)(ii) is, in our view, misconceived. For one, we are not concerned with the act of milk 'production' perse, but milk being the produce of a dairy farm. The term 'produce' may either be a verb or noun (see the Oxford Dictionary (New 9th Edition), page 1226). The term 'produce' in Rule 6DD(e)(ii) is with reference to milk as a consequence of dairy farming.



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18. Then again, the fact that the milk is pasteurised by the Company and the pasteurised milk is thereafter distributed by the appellant to the dealers is, in our considered view, immaterial, as yet another condition is that the cash payment should have been made *to the cultivator, grower or producer of such articles, produce or products*. It is in this context that the appellant relies on the decisions of this Court and of the Calcutta High Court to state that conversion of raw milk to pasteurised milk amounts to production and by engaging in this process, it assumes the status of 'producer'.

19. We do not agree as the reference to 'producer' in the conclusion of clause (e) of Rule 6DD is clearly to a dairy farmer and not to a company. The term 'producer' qua 'dairy farming' has to be understood noscitur a sociis with the terms 'cultivator' and 'grower' qua agriculture, forestry, poultry farming, apiculture etc, respectively. It cannot, by any stretch of the imagination stretch to include a company that is engaged in the activity of pasteurisation of milk, particularly bearing in mind the object of section 40A(3), being to discourage cash payments.

20. Both entities, the company and the distributor (appellant) have full access to banking facilities. In fact, the Supreme Court, in *Attar Singh's* case (supra), makes an observation that the Rule provides for an exemption for purchases of agricultural or horticulture commodities in cash where there are no banking facilities available in that place. The operation of Section 40A(3) is thus absolute. Rule 6DD has been brought



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in to carve out exceptions to the rigour of Section 40A(3) in worthy situations as identified in that Rule itself.

21. Nowhere does Rule 6DD envisage extension of that benefit to cash payments made by a distributor (appellant) to the company. There is no justification for why the payments in the present case were made in cash or what the exigencies were that prevented the entities from transacting through the bank.

22. As for the argument regarding prejudice caused to the appellant, one need only cite the observations of this Court in *R.Thiruvengadam v Assistant Commissioner of Income-Tax Circle – 1, Pondicherry* [(2019) 108 Taxmann.com 487 (Mad)] to following effect:-

"There is no case for the assessee that it was constrained to make cash payments under any of the circumstances coming within Rule 6DD. Insistence by sellers for cash does not get covered under any of the clauses in Rule 6DD. In taking the view, that Section 40A(3) of the Act will cover even payments made for acquiring stock-in-trade, lower authorities are fortified by the judgment of the Hon'ble Apex Court in the case of Attar Singh Gurmukh Singh Vs. ITO 191 ITR 667. As it is often said equity and tax does not always made good friends. In the circumstances, I am of the opinion that lower authorities were justified in applying Section 40A(3) of the Act to the subject transactions. I do not find any reason to interfere."

23. The substantial questions of law are answered against the assessee /appellant and in favour of the revenue. This tax case (appeal) is dismissed. No costs.

[A.S.M., J] [G.A.M., J]



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Index:Yes
Neutral Citation:Yes
ssm

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