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T.C.(MD)Nos.1 to 3 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : /09/2025

CORAM

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**
AND
THE HONOURABLE MR.JUSTICE **K.K.RAMAKRISHNAN**

T.C.(MD)Nos.1 to 3 of 2014

M/s.Abiram Agency
No./108, Warpet Road,
NLN House, Vendanpatti,
Thirumayam Taluk,
Pudukottai.
(PAN No.ABGFS4831A)

... Petitioner in all Tax Cases

vs.

The Income Tax Officer,
Ward-I(2),
Pudukottai.

... Respondent in all Tax Cases

Prayer in all Tax Cases: Tax Cases are filed under Section 260A of the Income Tax Appellate Tribunal, Chennai Bench 'B' in I.T.A.No.1453/MDS/2012 for the assessment year 2006-07; I.T.A.No.1454/MDS/2012 for the assessment year 2007-08; and I.T.A.Nos.1455/MDS/2012 for the assessment year 2008-09, dated 22.04.2013 and the orders made in M.P.Nos.143/MDS/2013, M.P.Nos. 144/MDS/2013, & M.P.Nos.145/MDS/2013, dated 17.09.2023.

For Petitioner in
all tax cases : M/s.A.L.Ganthimathi
Senior Counsel
For Mr.C.Mahadevan

For Respondent in
all tax cases : Mr.N.Dilipkumar
Standing Counsel



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COMMON ORDER

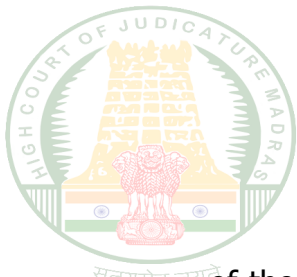
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P.VELMURUGAN, J.

The petitioner in all the cases is the assessee and the respondent is the Revenue. The petitioner has filed these Tax Cases, challenging the order passed by the Tribunal for the assessment years 2006-07, 2007-08 and 2008-09 respectively, dated 22.04.2013, and the order dated 17.09.2013 made in M.P.Nos.143/MDS/2013, M.P.Nos.144/MDS/2013 & M.P.Nos. 145/MDS/2013.

2. The short facts of the case in T.C.No.1 of 2024 [ITA No. 1453/Mds/2012 (Assessment Year 2006-07)] are as follows:-

2.1. The assessee, a partnership firm, is engaged in the business of selling building materials such as asbestos, cement sheets, ceramic items, and sanitary ware. The firm filed its original return of income for the assessment year 2006-07 on 18.12.2006, declaring a total income of Rs.61,310/-. The return was processed under Section 143(1) of the Income Tax Act. However, on 27.02.2008, a survey was conducted at the business premises of the assessee. During the survey, the authorities allegedly found excess stock amounting to Rs.2,57,027/- and a cash deficit of Rs.2,52,038/-. Based on these findings, the Assessing Officer (AO) believed that the assessee's income had escaped assessment and, accordingly, issued a notice under Section 148



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of the Income Tax Act on 17.06.2008 to reassess the income for the relevant assessment year.

2.2. In the reassessment proceedings, the assessee did not file a fresh return. However, the AO scrutinized the assessee's books of accounts and noticed a claim of expenditure towards the purchase of goods totaling Rs. 1,66,41,108/-, which included cash payments amounting to Rs.4,37,100/-. Additionally, the AO observed that the cash book revealed cash payments exceeding Rs.20,000/- amounting to Rs.46,96,275/-. As a result, the AO invoked Section 40A(3) of the Income Tax Act and disallowed 20% of the total cash payments, which amounted to Rs.51,33,375/-. The disallowed sum was Rs.10,26,675/-.

2.3. The assessee appealed the disallowance to the CIT(A), arguing that the payments were genuine and supported by documentary evidence such as invoices and books of accounts. Furthermore, the assessee contended that the payments were made in business exigency and in accordance with Rule 6DD of the Income Tax Rules, which allows certain exceptions for cash payments in excess of Rs.20,000/-.



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2.4. The CIT(A) accepted the assessee's explanation and deleted the disallowance, holding that the documentary evidence provided by the assessee sufficiently proved the genuineness of the cash payments. The CIT(A) also considered the provisions of Rule 6DD and allowed the claim.

2.5. However, the Revenue, in its appeal, contended that the CIT(A) had erred in deleting the disallowance under Section 40A(3). The Revenue argued that the assessee failed to explain why it had not made the payments through prescribed modes (i.e., account payee cheques or electronic transfer), as required by the statute, especially given that the assessee had regular business dealings with some of the payees. The Revenue further pointed out that the assessee did not demonstrate any compelling reasons for not adhering to the prescribed modes of payment.

2.6. The Tribunal, after examining the facts and statutory provisions, upheld the findings of the AO and restored the addition made under Section 40A(3), holding that the assessee had failed to provide adequate justification for not making payments through prescribed modes.

3. The short facts of the case in T.C.No.2 of 2024 [ITA No. 1454/Mds/2012 (Assessment Year 2007-08)] are as follows:-



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3.1. For the assessment year 2007-08, the assessee again faced reassessment proceedings. During these proceedings, the AO disallowed certain payments under Section 40A(3) for cash payments exceeding Rs. 20,000/-. In addition, the AO invoked Section 40(a)(ia) for non-deduction of tax at source (TDS) on various payments made by the assessee, including salary, rent, and interest payments, which amounted to a total of Rs. 13,49,720/-.

3.2. In the reassessment order, the AO disallowed the following amounts:

1. Rs.5,56,800/- for payments made for vehicles (lorry and van), which were owned by the assessee and did not require TDS deduction.
2. Rs.7,92,920/- for other payments, where the assessee did not produce any contract with the payees, thereby failing to justify the non-deduction of TDS.

The CIT(A) partly allowed the assessee's appeal by deleting the disallowance for Rs.5,56,800/- paid for its own vehicles, as no TDS was required on such payments. The CIT(A) also accepted the assessee's explanation that there was no contractual relationship with the payees in respect of Rs.7,92,920/-, which led to the non-deduction of TDS. In the Revenue's appeal, the Tribunal after examining the records, held that for the payments of Rs.5,56,800/- for vehicles, the Tribunal upheld the CIT(A)'s decision, as it was undisputed that



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these payments were for the assessee's own vehicles, and TDS was not applicable in such cases. However, for the payments of Rs.7,92,920/- to various parties where no contract existed, the Tribunal agreed with the Revenue's argument and restored the disallowance under Section 40(a)(ia) for failure to deduct TDS, ruling that the absence of a contract was not a valid reason for non-deduction of TDS. Thus, the appeal was partly allowed, upholding the disallowance under Section 40A(3) and Section 40(a)(ia).

4. The short facts of the case in T.C.No.3 of 2024 [ITA No. 1455/Mds/2012 (Assessment Year 2008-09)] are as follows:-

4.1. In the case for the assessment year 2008-09, the assessee once again faced reassessment proceedings. In the reassessment order dated 30.12.2010, the AO made several additions under Section 40A(3), Section 40(a)(ia), and Section 68. The disallowance under Section 40A(3) and Section 40(a)(ia) was consistent with the previous assessments, and the issue was largely similar to the other cases.

4.2. However, the AO also added Rs.14,24,300/- under Section 68 as unexplained cash credits in the current account of the partners. The AO noted that the assessee had failed to provide a satisfactory explanation regarding the source of these credits, and as no supporting evidence was provided, the



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amount was added to the income.

4.3.The CIT(A), in the appeal, deleted the addition under Section 68, stating that the assessee had provided evidence in the form of the capital accounts of the partners. The CIT(A) concluded that the source of these credits could be examined in the individual hands of the partners, rather than in the hands of the partnership firm. Based on this reasoning, the CIT(A) deleted the addition.

4.4. In the Revenue's appeal, the Tribunal observed that the CIT(A) had failed to provide the AO with an opportunity to verify the documents produced by the assessee during the appellate proceedings. The Tribunal found that while the assessee had filed the capital accounts of the partners, these accounts had not been examined by the AO in the original proceedings. Therefore, the Tribunal remanded the matter back to the AO for re-examination, allowing the AO to verify the documents and, if necessary, examine the cash credits in the individual hands of the partners. Thus, the Tribunal directed the AO to re-examine the issue, providing the assessee with an opportunity for a hearing.

5. Challenging the order passed by the Tribunal, the petitioner has filed



these tax cases.

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6. The learned counsel for the petitioner submits that the Tribunal failed to consider the purpose behind Section 40(A)(3) of the Act, and overlooked the fact that the second proviso to this section states that no disallowance should be made under Section 40(A)(3) where a payment exceeding Rs.20,000/- is made other than by crossed cheque or crossed demand draft, in cases and circumstances as may be prescribed, taking into account the availability of banking facilities, business needs, and other relevant factors. The learned counsel further argues that the Tribunal did not recognize that the circumstances mentioned in Rule 6DD and the Circulars issued by the Department over time are illustrative, not exhaustive. The proviso uses the terms "in such cases" and "other relevant factors," suggesting flexibility in its application. Rule 6DD allows for cash payments made by a person to an agent, who is required to make payments in cash for goods or services on their behalf, to be exempt from disallowance. In this case, the petitioner had provided a clear explanation, which was carefully examined and accepted by the first appellate authority. Moreover, the transactions were not suspicious, as evidenced by the regular books of account, bills, vouchers, and letters from suppliers confirming the transactions. Therefore, the Tribunal should have acknowledged that the



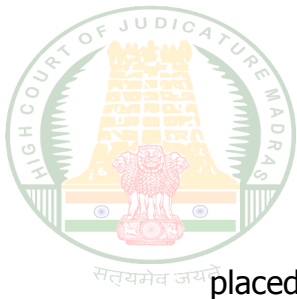
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petitioner is entitled to the benefit of the proviso to Section 40(A)(3), read with Rule 6DD of the Rules. In light of the above, the counsel prays that the order of the Tribunal be set aside.

7. The learned Standing Counsel for the Revenue submits that the Tribunal correctly dismissed the appeal and upheld the disallowance under Section 40(A)(3) of the Act. The Tribunal rightly found that the petitioner failed to meet the conditions outlined in the second proviso to Section 40(A)(3), which permits payments exceeding Rs.20,000 to be made otherwise than by crossed cheque or demand draft only in specific cases and under prescribed circumstances. The Revenue further submits that Rule 6DD and the Circulars issued by the Department do not provide an exhaustive list of exemptions, and the circumstances cited by the petitioner do not fall within the prescribed exceptions. Despite the petitioner's claims, the Tribunal properly considered the evidence and found that the transactions were not adequately supported by the necessary documentation or credible explanations. Therefore, the Tribunal was correct in its conclusion that the disallowance made by the Assessing Officer should stand, and the appeal deserves to be dismissed.

8. Heard the learned counsel on either side and perused the materials



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placed on record.

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9. All the tax case appeals were admitted on the following substantial questions of law:-

"(1) Whether the Tribunal committed an error of law in not complying the second proviso to Section 40(A)(3) of the Act to the case under Appeal?"

(2) Whether the Appellate Tribunal committed an error in not appreciating that the second proviso to Section 40(A)(3) of the Act would apply to the cases under Rule 6DD and also on consideration of business expediency and other relevant factors?"

10. Before going to the issue, it would useful to extract the relevant provisions of Section 40 of the Income Tax Act and Rule 6DD of the Income Tax Act:-

(i) Section 40(A) of the Income Tax Act

40. Amounts not deductible. — Notwithstanding anything to the contrary in sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession:-

.....

(ia) thirty per cent of any sum payable to a resident, on which tax is deductible at source under Chapter XVII-B and such tax has not been



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deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of section 139:

Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, thirty per cent of such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

Provided further that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the resident payee referred to in the said proviso.

.....

(3) Where the assessee incurs any expenditure in respect of which a payment of 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, exceeds ten thousand rupees), no deduction shall be allowed in respect of such expenditure.

(3A) Where an allowance has been made in the assessment for any year in respect of any liability incurred by the assessee for any expenditure and subsequently during any previous year (hereinafter referred to as subsequent year) the assessee makes payment in respect thereof, otherwise than by an account payee cheque drawn on a bank or account payee bank draft 3 [or use of electronic clearing system through a bank account], the payment so made shall be deemed to be the profits and gains of business or profession and accordingly chargeable to income-tax as income of the subsequent year if the payment or aggregate of payments made to a person



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in a day, exceeds [ten thousand rupees]:

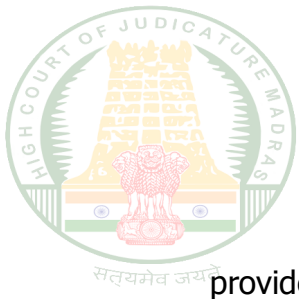
Provided that no disallowance shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-section (3) and this sub-section where a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, [or use of electronic clearing system through a bank account, exceeds ten thousand rupees], in such cases and under such circumstances as may be prescribed, having regard to the nature and extent of banking facilities available, considerations of business expediency and other relevant factors:]

Provided further that in the case of payment made for plying, hiring or leasing goods carriages, the provisions of sub-sections (3) and (3A) shall have effect as if for the words (ten thousand rupees), the words "thirty-five thousand rupees" had been substituted).

(ii) Section 6DD in Income Tax Rules, 1962

'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.] [Substituted 'Cases and circumstances in which a payment or aggregate of payments exceeding twenty 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' by Notification No. G.S.R. 56(E), dated 29.1.2020 (w.e.f. 26.3.1962).].

11. Section 40A(3) seeks to curb the practice of making large cash payments and to encourage business entities to transact through recognised banking modes. The provision is substantive in nature, aimed at ensuring transparency in commercial dealings and preventing tax evasion. Rule 6DD



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provides certain exceptions where payments exceeding the prescribed limit may be made in cash, such as payments to agents or where banking facilities are not reasonably available. Any assessee claiming the benefit of the proviso to Section 40A(3) and Rule 6DD is required to place satisfactory material before the authorities to justify the same.

12. Insofar as the disallowance under Section 40A(3) is concerned, the petitioner contends that a clear explanation was furnished before the first appellate authority, which was accepted at that stage. However, the Assessing Officer and the Tribunal did not find the explanation satisfactory and restored the disallowance. In order to afford the assessee an opportunity to substantiate its claim under the proviso to Section 40A(3) and Rule 6DD, the matter is remanded to the Assessing Officer, with liberty to the assessee to place all relevant materials and for the Assessing Officer to decide the matter afresh in accordance with law.

13. With regard to the disallowance under Section 40(a)(ia), no substantial question of law has been framed. The finding of the Tribunal in respect of this disallowance therefore requires no interference.



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14. Insofar as the addition under Section 68 is concerned, the Tribunal has already remanded the matter to the Assessing Officer for verification, and this Court only records the said direction.

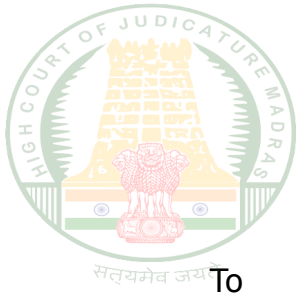
15. In the result, the disallowance under Section 40A(3) is set aside and remanded to the Assessing Officer for fresh consideration and accordingly the substantial questions of law are answered in favour of the Assessee. The Tribunal's findings with respect to Section 40(a)(ia) and the remand direction under Section 68 are noted.

16. The Tax Case Appeals are disposed of accordingly. No costs.

(P.V., J.) (K.K.R.K., J.)
22/09/2025

NCC:Yes/No
Index:Yes/No
Speaking/Non-speaking order

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- To
1. The Income Tax Officer,
Ward-I(2),
Pudukottai.
 - 2.The Commissioner of Income Tax (Appeals),
Tiruchirapalli.
 - 3.The Income Tax Appellate Tribunal,
Chennai Bench 'B',
Chennia.



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