

In the High Court for the States of Punjab and Haryana at Chandigarh

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ITA No. 545 of 2007

Date of decision: 29.2.2008

The Commissioner of Income Tax Faridabad

.. Appellant

Versus

M/s Alpha Toyo Ltd.

.. Respondent

Coram: **Hon'ble Mr.Justice Satish Kumar Mittal**
Hon'ble Mr.Justice Rakesh Kumar Garg

Present: Mr.Yogesh Putney, Advocate
for the appellant-Revenue.

Rakesh Kumar Garg,J

1. The Revenue has filed the present appeal under Section 260-A of the Income Tax Act (for short "the Act") against the order dated 22.12.2006 passed by the Income Tax Appellate Tribunal, Delhi Bench "E" New Delhi in ITA No.5496/DEL/04 for the Assessment Year 1990-91, raising the following substantial questions of law for consideration of this Court:-

(a) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT was right in law in deleting the disallowance of Rs.19,31,000/- made by the Assessing Officer under Section 40A(3) of Income Tax Act, 1961 particularly in view of the fact that Auditor had himself pointed out in Tax Audit Report filed with the return that assessee had made cash payments of Rs.19.71 Lacs in contravention of Section 40A(3) of Income Tax Act ?

b) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT erred in law in confirming the finding of Ld. CIT(A) that onus was on the Assessing Officer to prove that the entries originally made in the books were relating to payment on

account of expenditure and not loans and advances ignoring the fact reported by the Auditor in the Tax Audit Report and the fact that the assessee contended 1st time before ITAT only that these payments were of capital nature ?

2. The Assessee is a company. It manufactures switches. In the assessment order passed for the A.Y. 1990-91 u/s 143(3) of the Act, the Assessing Officer made an addition of Rs.19,71,000/- by invoking the provisions of S. 40A(3) of the Act. The assessee had made cash payments to M/s Asahi Alfa Ltd., M/s Niko Auto Ltd. and M/s Toyo Mirrors (P) Ltd. The disallowance made by the Assessing Officer was confirmed by the Commissioner of Income Tax (A). On further appeal by the assessee to the Tribunal the issue was remanded to the Assessing Officer for a fresh adjudication. Before the Tribunal the assessee took a plea that the payment of Rs.19.71 lakhs made to three parties which were disallowed by invoking S.40A(3) were expenditure of capital nature and therefore was not covered under the provisions of S.40A(3) of the Act. On such submissions the Tribunal remanded the matter to the Assessing Officer for fresh adjudication.

3. On such remand by the Tribunal the Assessing Officer again took up the issue of disallowance u/s 40A(3) of the Act for consideration. The assessee explained in the remand proceedings that the cash payments were made to the parties in question in respect of amounts standing as due and payable to them towards advances and that none of these payments was on account of revenue expenditure debited in the Profit and Loss account. The assessee also explained that the recipients of these payments had to make payment of dues to the government like excise duty, sales tax and payment to workers. The necessary copies of the accounts of the recipient companies and the books of accounts of the assessee were produced before the Assessing Officer. According to the Assessing Officer there were several cuttings and over writings and erasers in the accounts and vouchers. He therefore, concluded that

the entries in the books of accounts were manipulated. He therefore, concluded that the assessee failed to establish that the cash payments were made for capital expenditure or for repayment of loans. He therefore upheld the disallowances which were made in the original assessment proceedings.

4. On appeal by the assessee the Commissioner of Income Tax(A) deleted the addition made by the Assessing Officer for the reasons given in paragraph 2.2 to 2.4 of this order which reads as follows:-

“The issue has been examined and the stand of the Assessing Officer cannot be accepted. The Id. Counsel for the assessee has relied upon the annual report for 1989-90 and on page 19 of the report under the head “loans and advances” balances as on 31.3.1989 and that of March of 1990 have clearly been shown and these and others have been supported by the details of 'loans and advances' as per P.B. 49. Reference has also been made to the application made to the Tribunal under Rule 10 (PB 10-15) and a perusal of these documents clearly supports the claim of the appellant that these payments were not in the nature of any expenditure but were to square of the outstanding balances on account of loan and advances.

By pointing out to the various erasings and over-writings the Assessing Officer has not been able to show that the payments were indeed on account of any expenditure. The onus was entirely on the Assessing Officer to bring concrete evidence on record to clearly show that the payments were indeed for an expenditure incurred by the assessee in relation to the three different concerns. By simply referring to the cuttings and over writings the Assessing Officer has not been able to prove that these payments were not in the nature of 'loans and advances' but were for expenditure. It was on the Assessing Officer to establish that,

a) the entries originally made in the books and vouchers were relating to 'payment on account of expenditure' covered u/s 40A(3) (b) and then these entries were cut, erased over written subsequently to make them appear as entries of 'loans and advances'. Thus taking them out of the purview of S.40A(3). The Assessing Officer, as is apparent from the order, failed to even address this crucial and relevant issue.

On the contrary, the balance sheet, the annual report and the various documents clearly show the outstanding balances under the head 'loans and advances' and this fact has not been negated by the Assessing Officer. Under the circumstances, keeping in view the entire set of facts and circumstances, the disallowance of Rs.19,31,000/- of I.T.Act is deleted.”

5. Being aggrieved against the order of the Commissioner of Income Tax (Appeals), the Revenue filed the appeal before the Tribunal. The said appeal was dismissed by the Tribunal vide order dated 22.12.2006. Hence this appeal.

6. We have heard learned counsel for the Revenue. The Tribunal has found as a fact that the annual reports for the Assessment year 1989-90 of the assessee clearly show the outstanding loans to the three parties as on 1.4.1989. Copies of the loan account of the three parties for the period comprising the previous year are also available on the record. The plea of the assessee that the payments were made in respect of the capital account have been rightly accepted by the Commissioner of Income Tax(Appeals). The Assessing Officer without giving any finding on the issue has merely gone on the presumption that the books of accounts have been manipulated. The Assessing Officer has also not given a finding that the sum in question was actually revenue expenditure which were claimed as deduction in profit and loss account.

7. In view of the above finding of facts, the Tribunal has rightly concluded that the payment in question were made on account of capital account, therefore, provisions of Section 40A(3) of the Act were not attracted. Thus, we do not find any merit in this appeal and no substantial question of law arises for determination of this Court. Hence this appeal is dismissed.

RAKESH KUMAR GARG)
JUDGE

February 29, 2008
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(SATISH KUMAR MITTAL)
JUDGE



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