

AFR

Reserved on 13.01.2020

Delivered on 18.01.2020

Court No. - 42

Case :- WRIT TAX No. - 318 of 2016

Petitioner :- Ajai Kumar Singh Khaldelial

Respondent :- Principal Commissioner Of Income Tax And Anr.

Counsel for Petitioner :- Suyash Agarwal

Counsel for Respondent :- C.S.C.,Praveen Kumar,S.C.

Hon'ble Alok Mathur,J.

1. Heard Sri Suyash Agarwal, learned counsel for the petitioner as well as Sri Praveen Kumar, learned counsel for the respondents.
2. The petitioner by means of this writ petition has challenged the order passed by the Principal Commissioner, Income Tax, Gorakhpur thereby he has rejected the application preferred by the petitioner under Section 264 of the Income Tax Act, 1961 (hereinafter referred to as "the Act, 1961").
3. Learned counsel for the petitioner submits that petitioner is proprietor of M/s Purushottam Das Ajai Kumar, Asif Ganj, Azamgarh and is engaged in the business of retail trading of ready made and other clothes in the name of the proprietary concern. For the assessment year 2008-09, the petitioner's firm filed income tax return which included income of Rs.34,912/- earned from the house property besides business income of Rs.1,70,304/-. The petitioner got his firm's accounts audited with net profit of Rs.1,61,012/- showing @ 2.00% and gross profit of Rs.8,67,837/- being 44.33% of the gross receipt.
4. It has been further submitted on behalf of petitioner that he disclosed about the advance given to supplier's account as well as copy of the account of M/s Jalan Synthetics, Varanasi before the

assessing authority which clearly demonstrated that on various dates the amount of payment has been deposited by the petitioner in UBI, Varanasi bank on their instructions. It has further been contended that the assessing authority while passing the assessment order for the assessment year 2008-09, did not raise any objection relating to the aggregate amount of Rs.3,40,000/- deposited on various dates in the bank account of M/s Jalan Synthetics.

5. The assessment proceedings were completed in exercise of power under Section 143(3) of the Act, 1961 on the income of Rs.2,80,004/- by order dated 10.11.2010 and giving appeal effect it was revised at Rs.1,99,804/-.

6. The petitioner received a notice dated 30.03.2013, issued under Section 148 of the Act, 1961, stating therein that the authorities had reason to believe that cash payment of Rs.3,40,000/- had been made by the petitioner to M/s Jalan Synthetics for the assessment year 2008-09, in violation to the provisions of Section 40A(3) of the Act, 1961, which is other than by making payment through crossed account payee cheque or crossed bank draft, as such the same is liable to be disallowed and added back to the income of the petitioner.

7. The petitioner objected to the notice issued under Section 148 of the Act, 1961 and submitted that he had truly and faithfully disclosed all the facts necessary. He further stated that payment of Rs.3,40,000/- was genuine and that there is no violation of Section 40(3) of the Act, 1961 read with Rule 6DD of the Income Tax Rules, 1962 (*hereinafter referred to as "the Rules, 1962"*) and further that payment of Rs.3,40,000/- in cash to M/s Jalan Synthetics is also reflected in their ledger accounts and therefore, there was no basis for reopening of the assessment proceedings.

8. The assessing authority not being satisfied by the reply submitted by the petitioner proceeded to make addition of Rs.3,40,000/- in the income of the petitioner and disallowed the benefit/exemption under Section 40A(3) of

the Act, 1961 for the reason that payment exceeding Rs.20,000/- was made other than crossed cheque or bank draft.

9. The petitioner being aggrieved by the order dated 14.03.2014, preferred an application under Section 264 of the Act, 1961 before the Principal Commissioner, Income Tax, Gorakhpur on 07.04.2014.

10. By means of impugned order dated 19.01.2016, the Principal Commissioner, Income Tax, Gorakhpur has considered the application of the petitioner and has rejected the same holding that the petitioner had clearly misrepresented in his return as well as audit report with respect to application of Section 40A(3) of the Act, 1961 read with Rule 6DD of the Rules, 1962 and concluded that the payment made to M/s Jalan Synthetics Ltd. is not covered by any exemption. The assessing authority had carried out only limited examination in good faith with respect to the genuineness of the party and believed the assessee and auditor. He has further stated that there is difference between a document and information and despite documents being on record it was on the basis of the fresh information that the petitioner has concealed his income in violation of Section 40A(3) of the Act, 1961. It was within the competence and jurisdiction of the authority to reopen the assessment under Section 148 of the Act, 1961 and therefore upheld the order passed by the assessing authority.

11. Assailing the order of the Principal Commissioner, Income Tax, Gorakhpur, the petitioner has urged that the revenue has misinterpreted the provisions of Section 40A(3) of the Act and Rule 6DD of the Rules, 1962 and that the amount of Rs.3,40,000/-, deposited on various dates in the bank account of M/s Jalan Synthetics, would be covered under Rule 6DD(c)(v) of the Rules, 1962 as the same has been done by use of “electronic clearing system” through the Bank. It is further submitted that there was no new information in possession of respondent no. 2 for invoking reassessment under Section 147 of the Act, 1961, as the documents on the basis of which re-assessment has taken place, were already on record at the time of original

assessment and same can not be converted as fresh information in the course of examination by the audit party.

12. Sri Praveen Kumar, learned counsel for the respondents on the other hand has submitted that scope of Section 264 of the Act, 1961 is very limited and in exercise of powers the Principal Commissioner, Income Tax, Gorakhpur is empowered to hold limited enquiry into the grounds raised by the assessee and thereupon examining and passing appropriate orders. Power under Section 264 of the Act, 1961 cannot be equated with the power of appeal which lies to the appeal under Section 246 of the Act and in this regard he has submitted that the Principal Commissioner, Income Tax has duly enquired into the allegations made by the assessee and has rejected the application after due consideration of the same and therefore there was no infirmity in order rejecting the application preferred by the assessee and concluded that the writ petition be dismissed.

13. On merits Sri Praveen Kumar, learned counsel for the respondents submits that the assessee had made misrepresentation in his returns, declaring that no amount was admissible or it is liable under Section 40A(3) of the Act and Rule 6DD of the Rules, 1962 and same was also mentioned in the audit report under Section 44AB of the Act, 1961. he also submitted that only account number of M/s Jalan Synthetics was submitted by the assessee and no proof that the amount of payment had been deposited on their instructions. He further vehemently urged that the assessee had failed to prove that payment to M/s Jalan Synthetics was not made by cheque or bank draft on account of some business exigency, as the cash payment made by the petitioner was in contravention to the provisions of Section 40A(3) of the Act, 1961.

14. With regard to the issue regarding reopening of the assessment under Section 147 of the Act, 1961, he has submitted that the assessing authority had recorded sufficient reasons with regard to the fact that certain items of income though taxable had escaped notice of the assessing authority and

therefore the same did not amount to change of opinion and therefore there was no infirmity in the same.

15. Heard learned counsel for the parties and perused the record.

16. The petitioner who carries on the business of retail trade in ready made and other clothes had given advance to the suppliers bank account i.e. M/s Jalan Synthetics while depositing total amount of Rs.3,40,000/- on various dates between 12.06.2007 to 01.12.2007, in the UBI Bank, Varanasi in account no. 303505040010515.

17. In the return filed by the assessee he had declared that inadmissible expenses under Section 40A(3) of the Act read with Rule 6DD of the Rules, 1962 were nil and the same was also mentioned in the audit report. The assessing authority having no reason to disbelieve the aforesaid declaration made by the assessee, which was subsequently reopened in exercise of powers contained in Section 148 of the Act, 1947. The assessing authority, after giving opportunity of hearing to the assessee has made re-assessment by means of order dated 14.03.2014 and added Rs.3,40,000/- in the income of the assessee.

18. The application was preferred by the petitioner under Section 264 of the Act, 1961, against re-assessment proceedings and the impugned order passed by the Principal Commissioner, Income Tax also mentions that the assessee has filed application only against the order of assessment.

19. It seems that the issue pertaining to the validity of the order under Section 147 of the Act, 1961 was not raised by the assessee in his application and his only grievance was with regard to the re-assessment order. In para 22 of the writ petition the petitioner has stated that he is aggrieved by the re-assessment order passed under Section 148/143(3) of the Act, 1961 and the notice under Section 147 of the Act was not challenged.

20. The main question which falls for consideration of this Court is as to Whether the deposit of amount in cash in the bank account of M/s Jalan Synthetics can be held to be covered under the provisions of Rule 6DD(c)(v)

of the Rules, 1962? and for which purpose it can be said to be a payment by use of “electronic clearing system” through bank account.

21. It is relevant to reproduce the provisions of Section 40A(3) of the Act, 1961 and Rule 6DD of the Rules, 1962, which are reproduced herein below :

“Section 40A(3) – *Where the assessee incurs any expenditure in respect of which a payment or aggregate of payment 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.”*

“Rule 6DD – *No disallowance under sub-section (3) of section 40A shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-section (3A) of section 40A 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, exceeds twenty thousand rupees in the cases and circumstances specified hereunder, namely :-*

(a) where the payment is made to-

(i) the Reserve Bank of India or any banking company as defined in clause (c) of section 5 of the banking Regulation Act, 1949 (10 of 1949);

(ii) the State bank of India or any subsidiary bank as defined in section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959);

(iii) any co-operative bank or land mortgage bank;

(iv) any primary agricultural credit society or any primary credit society as defined under section 56 of the Banking Regulation Act, 1949 (10 of 1949);

(v) the Life Insurance Corporation of India established under Section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956);

(b) where the payment is made to the Government and, under the rules framed by it, such payment is required to be made in legal tender;

(c) where the payment is made by -

(i) any letter of credit arrangements through a bank;

(ii) a mail or telegraphic transfer through a bank;

(iii) a book adjustment from any account in a bank to any other account in that or any other bank;

(iv) a bill of exchange made payable only to a bank;

(v) the use of electronic clearing system through a bank account;

(vi) a credit card;

(vii) a debit card.

.....”

22. Initially Section 40A(3) of the Act, 1961 which requires payment in respect of expenses which exceed Rs.2500/- to be made by means of crossed cheque or crossed bank draft, on failure to do so, payment made were disallowed in computation of income. In order to remove hardship to smaller assesseees the ceiling limit was increased to Rs.10,000/- and later on it was increased to Rs.20,000/- by means of Finance Act, 2017 which was made effective on 01.04.2018. Section 40A(3) of the Act, 1961, has a non obstante clause which has over riding provision. It operates inspite of any thing to the contrary contained in any other provision of the Act, 1961 relating to computation of income under the head “profits and gains of business or profession”, the Legislature as thus made it clear that provisions

of Section 40A of the Act, 1961 will apply in place of other contrary provisions of this Act relating to computation of income. Sub Section 3 empowers the assessing authority to disallow deducting any expenditure in respect of which payment is made of any sum exceeding Rs.20,000/- otherwise than by crossed cheque or crossed bank draft.

23. Rule 6DD of the Rules, 1962 refers to cases and circumstances in which payment of sum exceeding Rs.20,000/- made by a mode otherwise than by crossed cheque or by crossed bank draft.

24. A combined reading of Section 40A(3) of the Act alongwith Rule 6DD of the Rules, 1962 would indicate that the provisions have been inserted by Legislature to prevent transactions of above Rs.20,000/-. It is also necessary to mention here that validity of Section 40A of the Act, 1961 has been up held by the Hon'ble Apex Court in the case of Attar Singh Gurmush Singh Vs. Income Tax Officer, 1991 SCR (3) 405, holding that onus is on the assessee to show that he is covered by any of the exception provided or in Rule 6DD of the Rules, 1962 and in the present case the amount was directly deposited in the account of the seller i.e. M/s Jalan Synthetics.

25. The term "use of electronic clearing system through bank account" would necessarily include the transaction of funds by electronic mode through clearing system. Any transfer of funds through use of electronic clearing system through a bank account would mean a transfer of funds through electronic mode of transfer i.e. RTGS, IMPS, NEFT etc., where the funds are transferred through the bank account of one individual into the bank account of beneficiary through electronic means. When the funds are transferred through electronic clearing system then at least two banks or two branches of the same bank have to be involved then only the money is transferred through electronic clearing system between them.

26. In the present case, the question which arises for consideration is that in case, cash is deposited directly in the bank account of the beneficiary, can

the benefit of Rule 6DD(c)(v) of the Rules, 1962, can be given to the assessee. Such transaction by depositing cash directly in the bank account of the beneficiary is not routed through any clearing house nor is the money sent through electronic mode and therefore such a transaction in my considered opinion cannot be covered by Rule 6DD(c)(v) of the Rules, 1962, and therefore benefit of the provision cannot be given to the petitioner. The petitioner also could not lead any evidence to show that he had deposited the amount on the instructions of M/s Jalan Synthetics or due to any business exigency. In absence of such evidence, the assessing authority rightly denied the benefit of exemption to the petitioner.

27. The impugned order dated 19.01.2016, passed by the Principal Commissioner, Income Tax has considered the reply given by the petitioner and has concluded that in respect to the transfer of funds made by the petitioner, benefit of Rule 6DD of the Rules, 1962 is not attracted and therefore computation made by the assessing authority has been upheld.

28. The jurisdiction of writ Court in exercise of jurisdiction under Article 226 of the Constitution of India is limited to examining the decision making process and not the decision itself. This position of law has been constantly reiterated by the Hon'ble Apex Court in its various pronouncements. The Apex Court in its recent judgment in the case of **Municipal Council, Neemuch v. Mahadeo Real Estate, (2019) 10 SCC 738**, has observed as under :

“13. In the present case, the learned Judges of the Division Bench have arrived at a finding that such a sanction was, in fact, granted. We will examine the correctness of the said finding of fact at a subsequent stage. However, before doing that, we propose to examine the scope of the powers of the High Court of judicial review of an administrative action. Though, there are a catena of judgments of this Court on the said issue, the law laid down by this Court in Tata Cellular v. Union of India [Tata Cellular v. Union of India, (1994) 6 SCC 651] lays down the basic principles which still hold the field. Para 77 of the said judgment reads thus:

“77. The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers?
2. Committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

- (i) *Illegality* : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.
- (ii) *Irrationality*, namely, *Wednesbury unreasonableness*.
- (iii) *Procedural impropriety*.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R. v. Secy. of State for Home Department, ex p Brind* [*R. v. Secy. of State for Home Department, ex p Brind*, (1991) 1 AC 696 : (1991) 2 WLR 588 (HL)] , Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases, the test to be adopted is that the court should, ‘consider whether something has gone wrong of a nature and degree which requires its intervention’.”

14. It could thus be seen that the scope of judicial review of an administrative action is very limited. Unless the Court comes to a conclusion that the decision-maker has not understood the law correctly that regulates his decision-making power or when it is found that the decision of the decision-maker is vitiated by irrationality and that too on the principle of “*Wednesbury unreasonableness*” or unless it is found that there has been a procedural impropriety in the decision-making process, it would not be permissible for the High Court to interfere in the decision-making process. It is also equally well settled that it is not permissible for the Court to examine the validity of the decision but this Court can examine only the correctness of the decision-making process.”

29. Applying the above principles to the facts of the present case, it is seen that the reassessment proceedings were initiated on account of the fact that it was discovered that the assessee had misrepresented in his return with regard to the payments made to M/s Jalan Synthetics of Rs.3,40,000/- in cash which were deposited in their bank account and such a transfer was not admissible in the light of provisions of Section 40A(3) of the Act and Rule 6DD of the Rules, 1962, and therefore, in the reassessment proceedings the said amount was added to the income of the assessee.

30. The reassessment order was assailed by moving an application under Section 264 of the Act, 1961. The assessing authority has duly considered the application of the assessee and after considering the same has recorded a finding that the assessee has clearly misrepresented in his return as well as audit report with respect to Section 40A(3) of the Act and Rule 6DD of the Rules, 1962 and therefore the case of the petitioner is not covered by any of the exceptions. No evidence was led by the assessee to demonstrate that the cash was deposited at the instance of M/s Jalan Synthetics, so as to give benefit of Rule 6DD of the Rules, 1962, to the petitioner.

31. Learned counsel for the petitioner-assessee also could not demonstrate that the impugned order is bereft of reasons or that it is perverse or that it has failed to consider the relevant material or document and therefore in absence of any of such infirmity the contention of learned counsel for the petitioner cannot be accepted and the writ petition is liable to be dismissed.

32. In the light of discussion made above, this Court does not find any merit in the contentions raised by the petitioner. The writ petition is accordingly **dismissed**.

Order Date :- 18.01.2020

A. Verma

(Alok Mathur, J.)