

Form No.(J2)

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

PRESENT:

The Hon'ble JUSTICE T. S. SIVAGNANAM
AND

The Hon'ble JUSTICE ANANDA KUMAR MUKHERJEE

IA No.GA 2 of 2017 (Old No. GA 1186 of 2017)
In
ITAT 133 of 2017

PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA-4
VERSUS
M/S. STANDARD LEATHER PVT. LTD.

For the appellant : Mr. Debasish Choudhury, Adv.
Mr. Soumen Bhattacharya, Adv.

For the respondent : Mr. Sukalpa Seal, Adv.
Mr. Bhaskar Sengupta, Adv.

Heard on : January 7, 2022.

Judgement on : January 7, 2022.

T. S. SIVAGNANAM, J. : This appeal filed by the Revenue under Section 260A of the Income Tax Act, 1961 (the Act, in brevity) is directed against the order dated 07.09.2016 passed by the Income Tax Appellate Tribunal, 'C' Bench, Kolkata (the Tribunal) in ITA No.2620/Kol/2013 for the assessment year 2010/11.

The Revenue has raised the following substantial questions of law for consideration:

- (a) Whether on the facts and in the circumstances of the case, the Learned Income Tax Appellate Tribunal, 'C' Bench was correct in holding that the assessee was entitled to deduction in respect of raw hide purchases made in cash exceeding Rs.20,000/- u/s 40A(3) of the Income Tax Act, 1961 ?
- (b) Whether on the facts and in the circumstances of the case, the Learned Income Tax Appellate Tribunal, 'C' Bench was correct in holding that the purchases were made from the persons covered by the provisions of Rule 6DD(e) of the Income Tax Rules, without having any material on record to warrant and corroborate such view ?

We have heard Mr. Debasish Choudhury, learned standing counsel appearing for the appellant/revenue and Mr. Sukalpa Seal, learned counsel appearing for the respondent/assessee.

The assessing officer while computing the assessment by an order dated 14.3.2013 under Section 143(3) of the Act proposed to disallow the expenses which have been incurred by the assessee for the purchase of raw hides and skins by non-account payee cheques. The show cause notice was issued to the assessee, who had submitted the reply, stating that their case would be covered under the circumstances mentioned in Rule 6DD of the Income Tax Rules. Apart from that the copies of the purchase bills, transport bills, transport permit given by the Government, sales tax way bills and other documents were produced by the assessee to prove the genuineness of the transaction of purchase of raw hides and skins from the producers, the assessing officer issued notices to some of those persons under Section 133(6) of the Act which

appear to have returned by the postal department with the endorsement 'not known'. Therefore, the assessing officer disbelieved the transaction and treated those documents to be bogus transaction and, accordingly, disallowed the said claim and accordingly, added back the said claim while computing the assessment. The assessee carried out the matter on appeal before the Commissioner of Income Tax (Appeals)-XII [CIT(A)]. All the records which were placed before the assessing officer were once again placed before the [CIT(A)] and submissions were made on the facts of the case. The [CIT(A)] further noted the factual position and accepted the case of the assessee. After noting the documents produced by the assessee to prove the genuineness of the transaction. Furthermore, the [CIT(A)] observed that merely because the sellers and the traders are merchants of hides and skins, they cannot be termed to be producers. Thus, taking note of the facts, the assessee's appeal was allowed by order dated 13.08.2013. Aggrieved by the same, the Revenue filed appeal before the Tribunal. The Tribunal re-examined the factual position and noted that the assessing officer has not brought on record to prove the fact anything contrary except the observation that some of the notices sent under Section 133(6) of the Act have returned with postal endorsement 'not known'. The tribunal observed that merely because some of the notices were returned with such endorsement, it cannot be inferred that the purchase was not made from producers. Furthermore, the tribunal noted that the assessee maintained day-to-day stock register of raw hides and skins and purchase of raw hides and skins were duly entered in the stock register. Furthermore, the tribunal noted that there was no evidence available before the assessing officer to suggest that purchase was not made from the producers of raw hides and skins.

Furthermore, the tribunal noted from the tax audit report that the assessee has been maintaining day-to-day stock register and the quantity was clearly verifiable. Thus, the tribunal reappreciated the factual position. The tribunal also referred to the decision of the Hon'ble Supreme Court in *Attar Singh Gurumukh Singh -versus- Income Tax Officer* reported in (1991) 191 ITR 667 (SC). The learned counsel for the appellant/Revenue also placed the said decision for our consideration. The said decision was rendered in a case where the validity of Section 40A (3) of the Act was challenged. The Hon'ble Supreme Court has rendered the following observation :

“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.”

From the above decision it is clear that the provisions of Section 40A(3) of the Act read with Rule 6DD of the Rules are intended to regulate business transaction and to prevent the use of unaccounted money. Further, it has been laid down that it is always open to the assessee to furnish documents to prove that the payment in the manner prescribed under Section 40A (3) of the Act was not practicable or would have caused genuine difficulty to the payee. In the case on hand, the tribunal has noted the fact and also taken a note of the contemporaneous documents produced by the assessee, namely, the sales tax bills, transport permits and other Government records to prove the genuineness of the transaction. Apart from that, the day-to-day stock register were also maintained which is noted in the tax audit report. Furthermore, the payments were made to the suppliers of the hides and skins and considering the nature of the trade, the [CIT(A)] and the tribunal agreed with stand taken by the assessee.

Learned counsel appearing for the respondent/assessee placed reliance on the decision of this Court in *Commissioner of Income Tax, Kolkata-XI –versus- CPL Tannery*. In the said decision, an identical case arose for consideration and relief was granted to the assessee. Thus, we find that the tribunal was right in affirming the order passed by the [CIT(A)] and dismiss the appeal filed by the Revenue. Accordingly, we find no grounds to interfere with the order passed by the tribunal.

In the result, the appeal is dismissed and the substantial questions of law are answered against the Revenue.

The application being IA No.GA 2 of 2017 (Old No.GA 1186 of 2017) for stay also stands dismissed.

(T. S. SIVAGNANAM, J.)

I agree.

(ANANDA KUMAR MUKHERJEE, J.)

s.pal/pkd