

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/TAX APPEAL NO. 235 of 2022**

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PRINCIPAL COMMISSIONER OF INCOME TAX 1

Versus

SHUKLA DAIRY PVT. LTD.

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Appearance:

MRS KALPANAK RAVAL(1046) for the Appellant(s) No. 1
for the Opponent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE A.J.DESAI**
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 13/06/2022

ORAL ORDER**(PER : HONOURABLE MR. JUSTICE A.J.DESAI)**

1. Revenue has filed this appeal under section 260A of the Income Tax Act, 1961 (For short "the Act, 1961") for the assessment year 2013-2014 challenging the judgment and order dated 23.08.2021 passed by the Income Tax Appellate Tribunal, Surat Bench, Surat in I.T.A. No. 310/SRT/2018.

2. Following substantial questions of law are proposed by the Revenue :

"i) Whether on the facts and in the circumstances of the case and in law, the learned Tribunal was justified in quashing the order passed u/s 263 of the Act even though the Assessing Officer had passed the assessment order without making inquiries or

verification which should have been made to ascertain whether the parties to whom cash payments were made were milk producers and were covered by circumstances stated in clause(e)(ii) of Rule 6DD of Income Tax Rules.

(ii) Whether on the facts and in the circumstances of the case and in law, the learned Tribunal was justified in quashing the order passed u/s 263 of the Act even though the Assessing Officer had passed the assessment order without making disallowance u/s 40(a)(ia) on payment made to labour contractor, Shri Rameshbhai of Rs. 13,41,006/- even though no TDS was deducted on the said payment.

(iii) Whether on the facts and in the circumstances of the case and in law, the learned Tribunal had erred in holding that the disallowance u/s 40(a)(ia) was made on the issue of non-deduction of TDS on payment made to Shri Rameshbhai and assessee accepted the disallowance even though no such disallowance was made in the assessment order.

(iv) Whether on the facts and in the circumstances of the case and in law, the learned Tribunal was justified in quashing the order passed u/s 263 of the Act without giving a finding on the applicability of clause (a) of Explanation-2 to subsection(1) of section 263 of the Act on the basis of which the revision order u/s 263 of the Act was passed by the Principal Commissioner of Income-tax."

3. The respondent-assessee is engaged in the business of manufacturing of dairy products. The assessee filed its return of income for the assessment year 2013-2014 on 30.09.2013 declaring total income at Rs.29,09,590/-. The

Assessing Officer passed order dated 18.03.2016 under section 143(3) of the Act, 1961 assessing total income of the assessee at Rs. 33,05,686/-.

4. The Principal Commissioner of Income Tax-2, Surat (For short "PCIT") on examination of assessment records, noticed from the ledger account of the assessee company with one Rameshbhai that assessee company had paid Rs. 13,41,006/- to Rameshbhai in cash in the financial year 2012-2013 relevant to assessment year 2013-2014.

5. The assessee-company in its reply submitted that Rameshbhai is not a contractor but employee of the assessee company and money was paid to him for payment to labours. However, during the survey proceedings, the assessee company admitted that Rameshbhai is contractor who provided labours and no TDS was deducted on payment to Rameshbhai and it was also noticed that the assessee company has not deducted Provident Fund from payments made to said Rameshbhai, as was evident from the PF statement of assessee company and therefore, the payment of Rs.13,41,006/- ought to have been disallowed under section 40(a)(ia) of the Act, 1961.

6. PCIT also further noticed that assessee company paid Rs.20,70,763/- to one Becharbhai Bharwar in the financial year 2012-2013 and on 15 occasions

in excess of Rs. 20,000/- and further that Becharbhai falls under the category of milk producer and therefore, payment to him in cash in excess of Rs. 20,000/- is permissible under Rule 6DD of the Income Tax Rules. PCIT further observed that other sellers of milk to assessee company were traders and hence not eligible for benefit of this Rule.

7. PCIT further observed that during survey in the financial year 2012-2013, it was found that Rs.1,82,18,581/- was paid by the assessee in cash in excess of Rs. 20,000/- which was neither disputed nor the statements retracted and only Rs.20,70,763/- was allowable expenditure under section 40A(3) of the Act, 1961 read with Rule 6DD of the Income Tax Rules, 1962. It was further observed that declaration of Rs. 15,00,000/- paid during the financial year 2012-2013 is regarding irregularities in books of account and hence it has no bearing on disallowance of cash payment in excess of Rs. 20,000/-. PCIT therefore, observed that Rs. 1,61,47,818/- (Rs.1,82,18,581 - Rs.20,70,763/-) should be disallowed.

8. PCIT therefore issued show cause notice dated 29.1.2018 to explain the above transactions.

9. In response to such notice, assessee contended inter-alia that assessee-company has made

payment to Rameshbhai-Labour Contractor and such issue was originally considered in assessment and accordingly disallowance was made and the assessee accepted such disallowance and therefore, no fresh disallowance is required to be made. With regard to payment of Rs. 1,61,47,818/- made to various persons from 1.4.2012 to 22.1.2013, the assessee-company submitted that the payments are either covered by the exceptions provided in Rule 6DD of the Income Tax Rules or payment of Government stamp duties and fees or purchase of agriculture or dairy produce or the payment might not have been deposited to profit and loss account because the same may not be revenue expenditure or may be forming part of the disclosure made for the said period.

10. PCIT after going through the reply of the assessee held that the Assessing Officer did not make any disallowance on payment made to Rameshbhai of Rs. 13,41,006/- and therefore, the order passed by the Assessing Officer was without proper verification. With regard to payment of Rs. 1,61,47,818/- made to various person in cash in excess of Rs. 20,000/-, PCIT noticed from the paper book produced by the assessee that the assessee had made the payment in cash in excess of Rs.20,000/- in a single day which requires detailed verification by the Assessing Officer. Therefore, the PCIT set aside

the order passed by the Assessing Officer with a direction to frame a fresh assessment.

11. Being aggrieved by the order passed by the PCIT under section 263 of the Act, 1961, the assessee preferred appeal before the Tribunal. The Tribunal by impugned order allowed the appeal quashing and setting aside the order passed by PCIT as under :

"In ITA No. 310/SRT/2018 {for assessment year 2013-14, ld PCIT has raised the same issue of payment in cash in excess of Rs.20,000/-: In the matter of payment of Rs. 1,61,47,818/- made to various persons in cash in excess of Rs.20,000/-, the ld PCIT, noted that in several time, the assessee had made the payment in cash in excess of Rs.20,000/- in a single day which, requires detailed verification by the assessing officer. Therefore, order passed by the Assessing officer for A.Y. 2013-14 under section 143(3) of the Act, on 22.03.2016 is erroneous and prejudicial to the interest of the Revenue.

Learned PCIT noticed that other sellers of assessee company are traders, hence, not eligible for benefit of the Rule 6DD of Income Tax Rules. In view of this, from the findings during survey that in F.Y. 2012-13, Rs. 1,82,18,581/- was paid by assessee in cash in excess of Rs.20,000/-, which was neither disputed nor the statements retracted later, and out of the said amount Rs. 1,82,18,581/-, only Rs.20,70,763/- was allowable expenditure under section 40A(3) of the Act, read with Rule 6DD of the Income Tax Rules. Further, declaration of Rs. 15,00,000/- made for F.Y. 2012-13, is regarding irregularities in books of accounts and hence, it has no bearing on disallowance of cash payment in excess of Rs.20,000/-. Therefore, payment of Rs. 1,61,47,818/-(Rs. 1,82,18,581 - Rs.20,70,763/-) should be disallowed by the assessing officer. Since, the assessing officer has not disallowed

Rs. 1,61,47,818/- therefore, ld PCIT held that order passed by the assessing officer is erroneous and prejudicial to the interest of revenue.

We note that during the assessment proceedings, assessee had submitted before assessing officer (AO), the cash payment register and explained each of the item of proposed addition as per show cause notice of assessing officer. The cash payment register, which is placed at paper book page nos, 22 to 27, wherein payment to the tune of Rs. 1,82,18,581/- has been explained to the assessing officer. The assessing officer, having gone through the cash payment register and explanation of each item, did not make the addition. Therefore, we note that assessing officer has examined this issue during the assessment stage and has taken a possible view and therefore, he did not make the addition. Hence, so far this issue is concerned, the order passed by the assessing officer, is neither erroneous nor prejudicial to the interest of the Revenue."

12. In view of above findings of fact arrived at by the Tribunal and in view of settled legal position with regard to invoking of section 263 of the Act, 1961, we are of the opinion that there is no infirmity in the impugned order passed by the Tribunal so as to give rise to any substantial question of law much-less any question of law as proposed or otherwise.

13. Tax Appeal is accordingly dismissed.

(A.J.DESAI, J)

(BHARGAV D. KARIA, J)

RAGHUNATH R NAIR