IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 725 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE M.R. SHAH Sd/-
and
HONOURABLE MR.JUSTICE A.Y. KOGJE Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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PRINCIPAL COMMISSIONER OF INCOME TAX 3
Versus
KESHVALAL MANGALDAS

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Appearance:
MRS MAUNA M BHATT(174) for the PETITIONER(s) No. 1
MR MANISH J SHAH(1320) for the RESPONDENT(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE M.R. SHAH**
and
HONOURABLE MR.JUSTICE A.Y. KOGJE

Date : 02/07/2018
ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE M.R. SHAH)

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Income Tax Appellate Tribunal, “B Bench, Ahmedabad, dated 11.09.2017 in

ITA No.1219/Ahd/2015 for the Assessment Year 2008-09 by which the learned Tribunal has dismissed the said appeal preferred by the Revenue and has confirmed the order passed by the Commissioner of Income Tax (Appeals) deleting the addition of Rs.2,83,55,337/- under Section 40A(3) of the Income Tax Act, 1961, made by the Assessing Officer, the Revenue has preferred the present Tax Appeal with the following proposed question of law:-

> *"Whether the Appellate Tribunal was right in law and on facts in upholding the decision of the CIT(A) and thereby deleting the addition of Rs.2,83,55,337/- u/s.40A(3) of the I.T.Act, 1961 made by the Assessing Officer in the assessment order?"*

2. The assessee, who is a Commission Agent for purchase/ sale of food-grain and holds the licence issued by the Agricultural Produce Market Committee, filed a Return of Income for A.Y. 2008-09. The income was assessed under Section 143(3) of the Act at Rs.1,20,592/- against the return income of Rs.25,400/-. The case was reported under Section 147 that the assessee purchased goods of Rs.2,83,55,337/- wherein payments exceeding Rs.20,000/- were made in cash to various parties. The A.O. issued notices and called upon the assesee to furnish particulars with respect to the payments made to various farmers. However, the fact remains that in the

Books of Accounts, the aforesaid amount was shown to be paid to various farmers and even the receipts were also produced. However, the assessee could not furnish / produce those persons / farmers and the assessee explained that it could not produce furnish the names and addresses of the persons to whom cash payment was made because farmers are known by village name they come from and it is difficult and rather impossible to track them now. The A.O. did not accept the said explanation. However, the A.O., without rejecting the Books of Accounts, made disallowance of Rs.2,83,55,377/- under Section 40A(3) of the I.T.Act. On an appeal before the learned CIT(A), the learned CIT(A), relying upon and/or considering Rule 6DD(e)(i) of the Income Tax Rules, 1962, deleted the disallowance under Section 40A(3) by observing that as the payment was made for agricultural produces, as per the aforesaid provision, it was open for the assessee to make the payment in cash above Rs.20,000/-. Feeling aggrieved and dissatisfied with the order passed by the learned CIT(A), the Revenue preferred the appeal before the learned ITAT and by impugned judgment and order, the learned ITAT has dismissed the said appeal and has confirmed the order passed by the learned CIT(A) deleting the disallowance made by the learned A.O. under Section 40A(3) of the I.T. Act.

3. We have heard Mrs.Mauna M.Bhatt, learned advocate appearing on behalf of the Revenue and Shri Manish J. Shah, learned advocate appearing on behalf of the respondent-assessee. We have perused and considered the order passed by the learned A.O., CIT(A) as well as the learned ITAT.

4. It is required to be noted and it is not in dispute that the assessee is engaged in the business as a Commission Agent for purchase/ sale of food-grain / agricultural produces and is also holding licence issued by the Agricultural Produce Market Committee. In the Books of Accounts, the assessee has shown the amount of Rs.2,83,55,337/- paid to various farmers. However, as the payments were exceeding Rs.20,000/- in cash, the A.O. made the disallowance under Section 40A(3) of the Act. However, considering Rule 6DD(e)(i) of the Income Tax Rules, 1962, and when the payment was made by cash exceeding Rs.20,000/-, it was permissible if the same was paid for purchase of agricultural produces. It is required to be noted that in the present case, in the Books of Accounts, the said payment was shown to be paid to various farmers and even the receipts were also produced but the assessee could not produce the farmers/ list of farmers for which a reasonable

explanation was also given. However, without rejecting the Books of Accounts, the learned A.O. made the addition under Section 40A(3) of the Act which is rightly deleted by the CIT(A) and rightly confirmed by the learned ITAT. In the present case, Rule 6DD(e)(i) shall be applicable and the same is rightly applied by the learned CIT(A) as well as the learned ITAT. It cannot be disputed and it is not disputed that as such, the assessee was engaged in the business of Commission Agent for purchase /sale of food-grain and is also holding licence issued by the Agricultural Produce Market Committee.

5. Considering the aforesaid facts and circumstances of the case, when the disallowance made by the learned A.O. under Section 40A(3) of the Income Tax Act has been deleted by the learned CIT(A) and the same has been confirmed by the learned ITAT, it cannot be said that the same is contrary to the provisions of the Act and/or erroneous. No substantial question of law arises. Hence, the present appeal deserves to be dismissed. Accordingly, it is dismissed.

Sd/-
(M.R. SHAH, J)

Sd/-
(A.Y. KOGJE, J)

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