ito Vs. Evershln Platers

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Court : Income Tax Appellate Tribunal ITAT Agra

Decided On : May-30-2003

Reported in : (2004)90TTJAgra929

Appellant : ito

Respondent : Evershln Platers

Judgement :
This appeal of the revenue is directed against the order dated 11-10-1995, passed by Commissioner (Appeals)-11, Agra, for asst. yr.

1992-93.

"1. That the learned Commissioner (Appeals), Agra has erred in law and on facts in deleting the disallowance of Rs. 5,34,323 made under section 40A(3) of the IT Act, 1961, withont properly appreciating the facts and circumstances of the case as discussed by the assessing officer in his order.

2. That the learned Commissioner (Appeals), Agra has erred in law and on facts in holding that rule 6DD(j) r/w Board's Circular No. 220 is applicable in this case.

3. That the order of the learned Commissioner (Appeals), Agra being erroneous in law and on facts be set aside and that of the assessing officer be restored." Briefly stated facts are that the assessing officer found that the assessee had made cash payments to various contractors engaged for rendering service in respect of polishing and electroplating business.

The total expenditure incurred on such payments amounted to Rs. 5,34,323 out of which payments made in contravention of section 40A(3) amounted to Rs. 1,88,397.55. The said payments were made to Shri Chhotey, Shri Govind, Shri Fattey and to Shri Hari Lal. The assessee pleaded that his case was covered under the provisions of rule 6DD(j) r/w Circular No. 220, as he had duly established the identity of the payee and genuineness of expenditure incurred and that always in the past he had been making payment to the contractors engaged by him in cash only because they in turn had to make payments to the workers engaged by him in cash. He further said that these contractors do not have their bank accounts as was borne out from the affidavits filed by them before the assessing officer. The assessee relied upon the decision in CIT v. Ram Agya Shyam Narain (1991) 189 ITR 470 (All) and Venktata Satyanarayana Timber Depot v. CIT (1987) 165 ITR 253 (AP).

However, the assessing officer distinguished the facts of the said cases and held that there were no exceptional circumstances for making payments in cash to the contractors. Hence, he made disallowance of Rs. 6,34,323 under section 40A(3) of the Act.

On appeal before the Commissioner (Appeals) the assessee submitted that the contractors to whom payments were made were all illiterate and were not in a position to maintain bank account. These persons were working for the assessee and rendering efficient services so that the assessee had been able to conduct his business smoothly, therefore, he could not dictate his terms to them that the payment would be made to them by cheque only. Had he so insisted, they would not have rendered services to him and thus the entire business would have suffered. He further submitted that the applicability of the section 40A(3) is not mechanical and the circumstances provided in Circular No, 220 fully cover his case. As for the assessing officer's observation that affidavits filed by them contained similar language and same Notary attested them was no ground for rejecting the affidavits as all the persons were very much in existence and still working for the assessee and the assessing officer could have examined them before brushing aside the contents of the affidavits wherein they clearly admitted that since they did not have any bank account as they were illiterate and not in a position to operate bank account and were thus accepting payments for their work in cash only. Thus, the assessing officer wrongly cast aspersions on the conduct of the assessee that he tried to manipulate the payments by not allowing the payees to maintain bank accounts. In fact, the payments had not been held to be bogus as he had himself agreed that the same had been made to contractors for doing electroplating and polishing jobs. The learned Commissioner (Appeals) held that the assessing officer wrongly covered the assessee's case under section 40A(3) as the facts fully warranted the applicability of provisions of rule 6DD(j), r/w Circular No. 220. The payments had been made for genuine business needs and were not bogus. Thus, he deleted the impugned addition.

Before us the learned Departmental Representative has submitted that the assessee has failed to show exceptional circumstances. Thus, the CBDT Circular No. 220 is not applicable to the facts and circumstances of the instant case. The learned Departmental Representative has pointed out that these contractors have been working for the assessee for the last ten to fifteen years. As such, they were not new to the assessee. Therefore, the assessee could have easily made the payments to the contractors by crossed cheques or bank drafts. When payment is made in contravention of section 40A(3) though payment is genuine, that cannot be allowed as genuineness of payment is required in all cases but payment by cheques or drafts is an additional requirement under section 40A(3). A reliance in this connection has been made to the decision of Calcutta High Court in the case of Bagmari Tea Co. Ltd. v.CIT (2002) 121 Taxman 143 (Cal). He has further submitted that provisions contained in section 40A(3) are mandatory. Section 40A(3) is intended to serve the objective of checking tax evasion and to ensure that the payments exceeding Rs. 10,000 are made by crossed cheque and/or bank drafts. Therefore, it is necessary to ascertain when the deduction is claimed, whether the payment was genuine. The onus is on the assessee to establish the exceptional circumstances and also genuineness of the payment and identity of payee. He also submitted that the payments have definitely not been established by the assessee.

Thus, he has supported the order passed by the assessing officer while relying upon the decisions in Marayan Bijoy Kumar v. CIT (1987) 163 ITR 695 (Pat), Hari

Chand Virender Paul v. CIT (1983) 140 ITR 148 (P&H), Associated Engineering Enterprise v. CIT (1995) 216 ITR 366 (Gau), Vijay Kumar Ajit Kumar v. CIT (1991) 191 ITR 391 (All) and Porwal Udhyog (India) v. CIT (1982) 135 ITR 591 (MP).

On the other hand, the learned counsel for the assessee has submitted that the assessee engaged in the job work for doing polishing, cutting, buffing and nickel work for which the assessee had engaged the labourers. The said works were done through the contractors. The payments to these contract labourers have been made in cash as they do not have bank account and they are illiterate persons. He has further mentioned that affidavits of all these persons were filed before the assessing officer. Their statements were also recorded by the assessing officer. They have clearly admitted the payments made by the assessee in cash for the work done by them. However, the assessing officer has rejected the contents of the affidavits and the statements made by the contract labourers. The learned counsel has further pointed out that in earlier years and in the subsequent years the payments made have been accepted by the department. Thus, he supported the order passed by the learned Commissioner (Appeals).

We have heard the parties and perused the records of the case.

Sub-section (3) of section 40A empowers the assessing officer to disallow, as a deduction, any expenditure in respect of which payment is made of any sum exceeding Rs. 10,000 otherwise than by crossed cheque or crossed demand draft, unless the payment is made under the circumstances which may be prescribed by rules, having regard to the nature and extent of the banking facilities available, considerations of business expediency and other relevant factors. The object of the provisions is patently and clearly discernible on the face of the provision itself. It is obviously designed to check tax evasion by claims of cash expenditure which are difficult of proper investigation by the revenue. There should be some justifiable and acceptable reason for making payments exceeding Rs. 10,000 otherwise than by crossed cheque or bank draft in the absence of which the payment could be disallowed. With a view to avoiding genuine hardship to taxpayers certain exceptions were notified under rule 6DD(j) of IT Rules, 1962, by virtue of which payment in a sum exceeding the specified amount may be made otherwise than by a crossed cheque drawn on a bank or a crossed bank draft in certain circumstances. The Board by Circular No. 220 illustrated the circumstances in which rule 6DD(j) would be attracted.

It provides that all the circumstances in which the conditions laid down in rule DD(j) would be applicable cannot be spelt out. However, some of them which would seem to meet the requirements of such rule are : (ii) The transactions are made at a place where either the purchaser or the seller does not have a bank account; or (iv) The seller is refusing to accept the payment by way of crossed cheque/draft and the purchaser's business interest would suffer due to non-availability of goods otherwise than from this particular seller; or (v) The seller acting as a commission agent, is required to pay cash in turn to persons from whom he has purchased the goods; or (vi) Specific discount is given by the seller for payment to be made by way of cash.

The assessee is engaged in the job work for doing polishing, cutting, buffing and nickel work for which the assessee had engaged labourers.

Such work was done through contractors. The assessee made payments in cash to various contractors for rendering the job work as aforesaid.

The total expenditure in contravention of section 40A(3) is amounting to Rs. 1,88,397.65. The claim of the assessee is that the payments to these contractors have been made in cash as they do not have bank account and they are illiterate persons. The assessee filed the affidavits of these persons and their statements were recorded by the assessee (sic-assessing officer). They admitted having received the payments in cash from the assessee for the work done by them. The question is whether there exist exceptional circumstances under which the assessee was required to make the payments otherwise than by crossed cheque or crossed bank draft inasmuch as the genuineness of payment and identity of payee does not appear to be in dispute. It is seen that the contractors are not new to the assessee. It is seen that the assessee is engaged in this business since long and has been getting the job done through these contractors who in turn engage the labourers for doing polishing, cutting, buffing and nickel works. The impugned payments have been made to the contractors and not to the labourers engaged by the said contractors. The contractors are not new to the assessee. The bank facilities are available at Mathura. Merely they are said to be illiterate cannot be a justified reason for making the payment in cash otherwise than by crossed cheque or crossed bank draft. We are of the considered view that the facts and circumstances of the case do not make out any exceptional circumstances under which the assessee could have made the payments in cash otherwise than by crossed cheque or by crossed bank draft. We, therefore, reverse the order passed by the Commissioner (Appeals) and restore the order passed by the assessing officer.