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ITA 156/2001

IN THE HIGH COURT OF DELHI
INCOME TAX APPEAL No.156/2001

DATE OF DECISION :- May 5, 2003

M/s.Ramaditya Investments Petitioner
Through Mr.Krishan Mahajan
Advocate

versus

Commissioner of Income-Tax Respondents
Through Mr. R. C. Pandey and
Mr.A.K.Jha, Advocates

CORAM :-

- * HON'BLE MR JUSTICE B.A.KHAN
- * HON'BLE MR JUSTICE S.N.KAPOOR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? No.
3. Whether the judgment should be reported in the Digest ?

KHAN,(J)

Appellant claims to be a sub-broker and engaged in purchase and sale of shares and debentures, etc. He was found to have made some cash payments exceeding Rs.10,000/- to the tune of Rs.5,10,921/- in violation of provisions of Section 40-A (3) of Income-Tax Act read with Rule 6DD. Though he explained his position but ITO felt dis-satisfied and ordered addition of Rs.5,10,921/- for assessment year 1992-93 by order dated 4.10.1993. He



took appeal against this and Appellate Commissioner by order dated 6.7.1994 directed its deletion holding:-

"The circumstances under which cash payments have been made have been explained by appellant. However, the parties are identifying and there is no material on record to doubt about the genuineness of payments. Keeping in view the notification of the Board, as cited by appellant and also the exceptions to Section 40-A(3) as satisfied under Rule 6DD (j), the payments, if made on consideration of business exigencies and exceptional circumstances, will not come under the purview of Section 40-A(3). The addition of Rs.5,10,921/- is, therefore, deleted."

The Revenue filed an appeal against this before ITAT leading to passing of impugned order dated 27.11.2000 keeping the addition intact. While doing so, Tribunal referred to the clarifications issued by CBDT in terms of Rule 6DD (j) read with Section 40-A(3) and noted that no evidence or material was placed on record to show that the case fell within the exceptions contemplated by CBDT clarifications.

All that remained to be seen was whether there was any evidence or material on record to suggest that appellant's case fell within the exceptions provided in CBDT Clarification to Rule 6DD (j). The relevant exception which Appellant claims to be applicable to this case provides:-

"(v) The seller, acting as a commission agent, is required to pay cash in turn to persons from whom he has purchased goods."

Appellant admittedly is a sub-broker dealing in purchase and sale of shares. He explains that he was required to pay cash in several transactions in the peculiar nature of his business. He has reflected these in the cash book submitted to ITO. He has also provided letters from the concerned parties



confirming the transactions. Those parties were also identifiable and their letters of confirmation are also on record. Neither the transactions are disputed by the Revenue nor the identity of parties. In other words, the genuineness of these transactions is not doubted or called in question. Nor is it anybody's case that any steps were taken by the Revenue to go into the genuineness or otherwise of these. Therefore, Tribunal could not hold that there was no material or evidence on record to show that appellant's case was covered by the relevant exception. It seems that ITAT had over-looked the relevant material on record to draw the conclusion and its finding was contrary to record to that extent.

The ITAT order resultantly becomes unsustainable and is set aside and that passed by Appellate Commissioner is affirmed to allow this appeal.


(B.A. KHAN)
JUDGE


(S.N. KAPOOR)
JUDGE

May 5, 2003
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