



\$~40

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA 801/2014**

Date of decision: 22nd December, 2014

COMMISSIONER OF INCOME TAX-XIII Appellant
Through Ms. Suruchi Aggarwal, Sr. Standing
Counsel with Mr. Amir Aziz and Mr. Shashank
Menon, Advocates.

versus

HITESH BANSAL Respondent
Through

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE V. KAMESWAR RAO

SANJIV KHANNA, J. (ORAL)

This appeal by the Revenue pertains to assessment year 2008-09 and impugns order dated 9th May, 2014 passed by the Income Tax Appellate Tribunal (Tribunal, for short).

2. Learned counsel for the Revenue has relied upon decision of the Himachal Pradesh High Court in *Commissioner of Income Tax versus Dalip Chand and Sons* (2008) 301 ITR 276 (HP). In the said decision, it has been held that even prior to the amendment of Section 40A(3) of the Income Tax Act, 1961 (Act, for short) with effect from 1st April, 2009, effect should be given to the said provision by aggregating the total cash payments towards expenditure made to a particular person during a day. It is noticeable that the Tribunal in the impugned order



has referred to judgments, which take the other view and reliance has been placed upon the decision of the Orissa High Court in ***Commissioner of Income Tax, Orissa versus Aloo Supply Co.*** (1980) 121 ITR 680 (Orissa) and the Madhya Pradesh High Court in ***CIT versus Treveni Prasad Pannalal*** (1997) 228 ITR 680 (MP). Another decision of the Allahabad High Court in ***Kiran Jaiswal versus ITO***, ITA No.191/2008 decided on 3rd May, 2012 reported as 2013(1) ALJ 357 has been quoted. The decision in ***Aloo Supply Co.*** (supra) was pronounced on 18th December, 1979, interpreting the word “sum” in the following manner:-

“The word "sum" has no statutory definition and must have the common parlance meaning. Relying upon its meaning as given in the dictionary, learned standing counsel has contended that the word conveys a sense of totality and, therefore, even if an assessee has paid a sum exceeding Rs. 2,500 in different installments, the total having exceeded the prescribed amount, the section operated. The argument does not at all impress us.

The word sum has been used there to convey the meaning of "amount" and not the sum total figure. The *Reader's Digest Great Encyclopaedic Dictionary* gives one of the meanings of "sum" as "a quantity or amount of or of money". The *Oxford English Dictionary* gives one of the meanings of the word to be a quantity of money of a specified amount. In *Bouvier's Law Dictionary* the meaning of the word has been given as a quantity of money or currency. The *Webster's Universal Unabridged Dictionary* gives the same meaning of the word "sum", i.e., a quantity of money or currency. As has been indicated in *Words and Phrases* (Permanent edn., Vol. 40) (West Publishing Co.), "



sum has a definite meaning appropriate to use with reference to an amount of money. In the case of *Commissioners of Customs and Excise v. Queen's Park Rangers Football and Athletic Club Ltd.* [1952] 2 QB 918 (QB), it has been indicated that the word "sum" has two connotations, one being a definite amount, e.g., so many pounds and shillings, and the other one being an addition of individual amounts to create a sum. In this connection see also *Kneen v. Martin* [1935] 1 KB 499 ; 19 TC 33 (CA). In the *A Dictionary for Accounts* by Eric L. Kohler, the meaning of "sum" has been given as "an amount, as of money". While legislating, Parliament obviously tries to convey its intention through express words. It is one of the well settled rules of interpretation that where a word used in a statute carries more than one meaning, that meaning which makes the provision workable and is nearest to the legislative intention, has to be adopted. We are of the definite view that the word "sum" in the relevant provision is used only to indicate an amount of money and does not refer to the totality of expenditure.

There is considerable for in the stand accepted by the Tribunal that if payments are made at different times during the day and the assessee has no idea that he has to pay to the same person on more than one occasion, he cannot be subjected to the statutory restriction contained in the provision in question unless any one payment is above Rs.2,500. Section 40A appears in Chap. IV of the Act dealing with computation of total income and is classified under the sub-heading in group D "Profits and gains of business or profession". Parliament must have intended a working rule and unless by clear meaning of the words a different intention appears, we must give the provision a construction which would make the provision workable."

3. The decision of the Himachal Pradesh High Court in ***Dalip Chand and Sons*** (supra) proceeds on several aspects in addition to the aggregation of the amounts paid in cash in one day. It was noticed that



other dealers similarly situated were making payments by cross cheque. The plea set up by the assessee that payments had to be made to sellers in other towns and the assessee did not have a bank account at places from where the sellers were operating, was not accepted. The contention based upon business or commercial expediency and other relevant factors, it was observed, was not proved. The Himachal Pradesh High Court has specifically recorded that in the said case, transactions themselves were found to be extremely doubtful and appeared to be fraudulent. Noticeably, in terms of the amendment made to Section 40A(3) of the Act, aggregation of the total payments during the day has to be made. However, the said amendment is applicable with effect from 1st April, 2009. As per the assessment order, the respondent-assessee had filed return on 8th August, 2008, declaring income of Rs.4,64,703/-. The Assessing Officer did not disturb the trading results declared by the respondent-assessee and has accepted the Gross Profit rate after recording that the assessee had furnished the requisite details, i.e. bank accounts details, details of expenses debited to the profit and loss account, and books of account, which were test checked and the case was discussed. The Assessing Officer was satisfied with the reasons given for fall in the Gross Profit rate which, it was stated, was on account of three-fold increase in turnover. The respondent-assessee had pointed out that he had



expanded the ambit and area of business to include sale of mobile phones, mobile phone accessories and recharge coupons. He had made purchases of Rs.1,38,43,525/- for which payments were made to two parties in cash. The purchases were not made on one day, but throughout the year. Earlier, he was only running an STD booth/public phone booth and related services. Being new in the business and having a small capital base of less than Rs.10,00,000/-, the distributors were not ready to give him goods on credit for even one or two days. He was hence, forced to buy goods in cash to remain in business. In case we accept the plea of the Revenue, then the entire expenditure for purchase of mobile phones, etc. of Rs.1,38,43,525/- would be disallowed and addition of Rs.1,38,43,525/- would be made to the miniscule earning, as accepted by the Assessing Officer, of Rs.4,64,703/-. The present case has several facets. There are several mitigating factors to show and establish commercial expediency and reasons for making the purchases, which are not disputed.

4. In view of the aforesaid factual position, we are not inclined to interfere with the impugned order of the Tribunal. The appeal of the Revenue is dismissed.

SANJIV KHANNA, J.

V. KAMESWAR RAO, J.

DECEMBER 22, 2014/NA