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

% **Decision delivered on: 03.10.2023**

+ **ITA 562/2023**

RAJESH KUMAR

..... Appellant

Through: Mr Shantanu Kanungo and Mr Rajeev
Bansal, Advs.

versus

THE COMMISSIONER OF INCOME TAX AND ANR

..... Respondents

Through: Mr Vipul Agrawal, Sr. Standing
Counsel with Mr Gibran Naushad and
Ms Sakshi Shairwal, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

CM No.50702/2023

1. Allowed, subject to just exceptions.

ITA 562/2023

2. This appeal concerns Assessment Year (AY) 2013-14.

3. *Via* the instant appeal, challenge is laid to the order dated 26.04.2023 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].

4. *Via* the order, the Tribunal sustained the order of the Commissioner of Income Tax [in short "CIT(A)"] and rejected the appeal of the assessee.



5. The record discloses that for the aforementioned assessment year, the appellant/assessee had filed a return of income (ROI), whereby, he declared his total income as Rs. 2,23,140/-.
6. During the assessment proceedings, the Assessing Officer (AO) found that in respect of certain purchases aggregating to Rs. 2,77,13,513/-, payments had been made otherwise than by account payee cheque.
7. On enquiry, it was found that payments to suppliers had been made *via* bearer cheques.
8. The aforementioned payments were paid to three concerns i.e., (i) Dolphine Sales Corporation, (ii) Salasar Enterprises, and (iii) Balaji Tradings. The breakup of the amounts is as follows:

Sl. No.	Name of the parties and address	Total purchase (in Rs.)	Mode of payment in cash during the year
1.	Dolphine Sales Corporation, 425/14, Street No.6, Bhola Nath Nagar, Shahdara, Delhi	96,69,410/-	32,09,513/-
2.	Salasar Enterprises, Flat No.1, Pl No.11/3/2932, Sh. Ram Colony, Bhola Nath Nagar, Shahdara, Delhi	57,28,776.75	28,41,000/-
3.	Balaji Trading co., 1658, III Floor, Mangal Market, Bhagirath Pla [sic] Delhi	2,30,94,494	2,16,63,000
	Total	3,84,92,680.7	2,77,13,513

9. It is not in dispute that the amounts were paid *via* bearer cheques to the above-mentioned concerns.
10. The appellant/assessee, in his defence, sought to rely on the erstwhile Rule 6DD(j) of the Income Tax Rules, 1962, read with Central Board of



Direct Taxes [in short, “CBDT”] circular no. 220 dated 31.05.1977 [in short, “1977 circular”]. The relevant part of the said 1977 circular, which is founded on Rule 6DD(j) reads as follows:

“383. *Circumstances when Income-tax Officer can relax requirement of making payments in excess of Rs. 2,500 by crossed cheques under clause (j) of rule 6DD*

1. Clause (j) of rule 6DD provides that no disallowance under section 40A(3) shall be made where the assessee satisfies the Income-tax Officer that the payment could not be made by way of a crossed cheque drawn on a bank or by a crossed bank draft—

a. due to exceptional or unavoidable circumstances; or

b. because payment in the manner aforesaid was not practicable, or would have caused genuine difficulty to the payee, having regard to the nature of the transaction and the necessity for expeditious settlement thereof.

and also furnishes evidence to the satisfaction of the Income-tax Officer as to the genuineness of the payment and the identity of the payee.

2. It would be seen that where payment of a sum exceeding Rs. 2,500 is made, otherwise than by a crossed cheque/draft, the assessee besides furnishing evidence as to the genuineness of the payment and the identity of the payee, is required to satisfy the Income-tax Officer that his case falls under any one of the circumstances mentioned in (a) and (b) above, if he claims that no disallowance should be made under section 40A(3).

3. Various representations have been received by the Board regarding the difficulties that are being experienced by the taxpayers due to lack of uniformity in the interpretation of the provisions of rule 6DD(j) by the Income-tax Officers. The Board have considered these representations and have decided to lay down certain guidelines to ensure uniformity of approach among the Income-tax Officers in this behalf.

4. All the circumstances in which the conditions laid down in rule 6DD(j) would be applicable cannot be spelt out. However, some of them which would seem to meet the requirements of the said rule are:

a. the purchaser is new to the seller, or

b. the transactions are made at a place where either the purchaser or the seller does not have a bank account; or

c. the transactions and payments are made on a bank holiday; or

d. 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

e. the seller, acting as a commission agent, is required to pay cash in turn to persons from whom he has purchased the goods; or

f. specific discount is given by the seller for payment to be made by way of cash.

5. It can be said that it would, generally, satisfy the requirements of rule 6DD(j), if a letter to the above effect is produced in respect of each transaction falling within the categories listed above from the seller giving full particulars of his address, sales tax number/permanent account number, if any, for the purposes of proper identification to enable the Income-tax Officer to satisfy himself about the genuineness of the transaction. The Income-tax Officer will, however, record his satisfaction before allowing the benefit of rule 6DD(j).

6. It is further clarified that the above circumstances are not exhaustive but illustrative. There could be cases other than those falling within the above categories which would also meet the requirements of rule 6DD(j).”

[Emphasis supplied by us]

11. Counsel for the appellant/assessee says that confirmations were received from the aforementioned parties, in compliance with the above 1977 circular.

12. The appellant/assessee contended before the AO that the 1977 circular applied to his case, given the circumstances at hand.

13. In support of his plea that the 1977 circular applied to the facts of the instant case, the assessee contends that there were exceptional circumstances that compelled the appellant/assessee to make payments *via* bearer cheques. Confirmations of the abovementioned concerns are produced in support of this plea.

14. Regarding this, our attention is drawn by the counsel for the appellant/assessee to the confirmations given by the aforementioned concerns. For convenience, relevant extracts of two (2) of the three (3)



confirmations are reproduced hereafter:

“DOLPHINE SALES CORPORATION

425/14, Street No. 8, Bhola Nath Nagar, Shahdara, Delhi-110032

Ref. No.

Date.....

TO WHOM IT MAY CONCERN

We herby [sic...hereby] confirm that Mr. Rajesh Kumar (Prop. Luxmi Trading Co.,Shop No. 2 Main Road, Jagatpur Road, village Wazirabad, Delhi - 110084) was a new entrant in the business of hardware and Iron & Steel trading. He approached us on APRIAL [sic...April] 2012 for the want of material and we insisted that we will not accept account payee cheques for the payment of our dues. Mr. Rajesh Kumar insisted for payment through banking channel only since he was receiving payments through bank. We then insisted for bearer cheque payment only.”

“Salasar Enterprises

Deals in :R.S. Joist, M.S. Angle, M.S. Channel & All Kinds of Iron & Steel

Auth. Dealer: RATHI STEEL LTD.

**FLAT NO.1, PLOT NO. A/4/2932, SHRI RAM COLONY, BHOLA
NATH NAGAR**

SHAHDARA, DELHI -110032

Ref. No

Dated

TO WHOM IT MAY CONCERN

We herby [sic...hereby] confirm that Mr. Rajesh Kumar (Prop. Luxmi Trading Co., Shop No. 2 Mam Road, Jagatpur Road, Village Wazirabad, Delhi-110084) was a new entrant in the business of hardware and Iron & Steel trading. He approached us on JANUARY 2013 for the want of material and we insisted that we will not accept account payee cheques for the payment of our dues. Mr. Rajesh Kumar insisted for payment through banking channel only since he was receiving payments through bank. We then insisted for bearer cheque payment only.”

14.1. These are undated confirmations that bear identical language. This brought the genuineness of the transactions into serious doubt.

15. According to us, even if we were to accept that the reason given in the confirmation letters was correct, that is, the appellant/assessee was a new



entrant in the business, we believe, to allay concerns of the suppliers i.e., the above-mentioned concerns, payments could have been made through bank drafts or other modes, whereby, banking channels were used for the subject payments.

16. Furthermore, we find that the Tribunal has returned with a finding of fact that these confirmations were produced for the first time before the CIT(A).

17. Counsel for the appellant/assessee says that this observation is not correct.

18. The grounds of appeal preferred before us show that there is nothing stated that would indicate that the appellant/assessee has averred that the said observation was perverse.

19. However, as indicated hereinabove, even if we were to assume that these confirmation letters were produced before the AO, it would still not help the cause of the assessee.

20. Clearly, payments made by the assessee to the concerns violated Section 40A(3) of the Income-tax Act, 1961 [in short, "Act"] as they were not made through an account payee cheque drawn on a bank, account payee bank draft or through the use of electronic clearing system through a bank account, and therefore, to fall within the ambit of the 1977 circular, the appellant/assessee was required to establish the genuineness of the transactions. The appellant/assessee having failed to do so, led to the deduction being rightly disallowed for the subject payments.

21. Significantly, with effect from A.Y. 2009-10, Rule 6DD was substituted *via* Notification No. 97/2008 dated 10.10.2008 issued by the CBDT. For convenience, the portions of this circular that pertain to the issue



in question are extracted hereafter:

**“INCOME-TAX (SEVENTH AMENDMENT) RULES, 2008 -
SUBSTITUTION OF RULE 6DD**

NOTIFICATION NO. 97/2008, DATED 10-10-2008

In exercise of the powers conferred by section 295 read with proviso to sub-section (3A) of section 40A of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:—

1. (1) *These rules may be called the Income-tax (7th Amendment) Rules, 2008.*

(2) *They shall come into force with effect from assessment year 2009-10.*

2. *In the Income-tax Rules, 1962, for rule 6DD, the following rule shall be substituted, namely:-*

[“Cases and circumstances in which a payment or aggregate of payments exceeding twenty thousand rupees may be made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft.

6DD. *No disallowance under sub-section (3) of section 40A shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-section (3A) of section 40A where a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees in the cases and circumstances specified hereunder, namely :—*

xxx xxx xxx

(j) **where the payment was required to be made on a day on which the banks were closed either on account of holiday or strike;**

[Emphasis is ours]

21.1. This aspect of the matter was not noticed by authorities below as they dealt with the 1977 circular placed before them without accounting for the substitution of Rule 6DD itself *via* the 2008 Notification.

21.2. To our minds, even if the petitioner’s/assessee’s case fell within the ambit of the 1977 circular, the petitioner/assessee could not have been



allowed deductions on the subject payments made by the petitioner/assessee as the rule under which leeway was claimed did not exist for the AY in question.

22. We find no good reason to interfere with the impugned order passed by the Tribunal.

23. According to us, no substantial question of law arises for our consideration.

24. The appeal is, accordingly, dismissed.

25. Parties will act based on the digitally signed copy of the order.

(RAJIV SHAKDHER)
JUDGE

(GIRISH KATHPALIA)
JUDGE

OCTOBER 3, 2023/RV

Click here to check corrigendum, if any