Singh did not question the integrity of any of the members of the Commission in delivering a particular judgment, though till then, they must have decided number of cases.

(14) In my opinion, no criminal contempt is disclosed against Capt. Amrinder Singh as defined in Section 2(c) of the Contempt of Courts Act, 1971. The rule is discharged accordingly.

J.S.T.

Before N. K. Sodhi & N. K. Sud, JJ.

M/S AGGARWAL STEEL TRADERS,—*Appellant*

versus

COMMISSIONER OF INCOME TAX, PATIALA & ANOTHER,—*Resopondents*

Income Tax Appeal No. 1 of 1998

16th November, 1999

Income Tax Act, 1961—S. 40—A(3)—Income Tax Rules, 1962—Rl. 6-DD(J)—Central Board of Direct Taxes Circular dated 31st May, 1977—Payments made by the assessee to 3rd parties in contravention of S. 40-A(3) which provision makes allowance for true & genuine transactions—Non-genuine sales are liable to be rejected especially in view of the C.B.D.T. circular dated 31st May, 1977 which requires a confirmatory letter from the assessee showing that ingredients of Rule 6-DD (J) are met qua each transaction between the assessee and the seller under the Sales Tax Act—The addition made is sustainable—Assessee's disclosure of income under the Amnesty Scheme after completion of assessment—Assessing officer is within right to issue notice under section 148 to regularise the said return and bring the entire income to tax as part of total income-Thus, both questions posed answered in favour of the revenue and against the assessee.

Held, that, the only defence of the assessee before the authorities below has been that the transactions fell within the exceptions provided in the Board's circular dated 31st May, 1977. No doubt the explanation rendered by the assessee in respect of the payments of Rs. 24,000 and Rs. 40,000 would be covered by the exceptional circumstances as provided in Board's circular, yet that by itself will not entitle the assessee to claim the relief. There is a further requirement provided in the Board's circular itself for furnishing of a confirmatory letter from the concerned parties. Admittedly no such letter had been furnished by the assessee. In this view of the matter, this question has to be decided against the

assessee and in favour of the revenue. We, therefore, hold that the Tribunal was justified in sustaining the addition of Rs. 64,000 in view of the provisions of S. 40-A(3) of the Act read with rule 6-DD of the Income Tax Rules.

(Para 12)

Further held, that the assessee had filed the return offering the additional income of Rs. 3 lacs under the Amnesty Scheme after the assessment for the assessment year 1981-82 had already been completed. The assessing officer, therefore, had rightly issued the notice under section 148 to regularise the said return and bring the amount of Rs. 3 lacs to tax. This action is clearly in accordance with the terms of the Amnesty Scheme and the assessee cannot possibly object to the additional income under the Amnesty Scheme being added to its total taxable income.

(Para 15)

Sanjay Kaushal, Advocate *for the Appellant*

R.P. Sawhney, Senior Advocate with Rajesh Bindal, Advocate *for the respondents.*

JUDGMENT

N.K. SUD, J.

(1) This appeal under Section 260-A of the Income Tax Act, 1961 (for short "the Act") is directed against the order of the Income Tax, Appellate Tribunal, Chandigarh Bench (for short the Tribunal) dated 7th October, 1998. The following questions of law had been formulated for consideration,—*vide* order dated 4th March, 1999 :—

> "1. Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal was justified in sustaining the addition of Rs. 64,000 in view of the provisions of Section 40-A(3) of the Income Tax Act, 1961 and Rule 6DD of the Income Tax Rules, 1962 ?
>
> 2. Whether in the facts and circumstances of the case the Tribunal was right in sustaining the addition of Rs. 3,00,000 ?"

(2) For resolving the controversy it is necessary to advert to the relevant facts. The assessee filed its return of income for assessment year 1981-82 on 8th May, 1981 declaring an income of Rs. 41,380. The assessment under Section 143 (3) was framed by the Assessing Officer on 27th March, 1986 and an addition of Rs. 6,08,578 was made on

account of alleged bogus purchases. The Assessing Officer had also raised another dispute about four payments totalling Rs. 1,42,749 having been made in contravention of Section 40-A(3) of the Act. However, no separate addition on this score was made on the ground that the same stood covered in the addition of Rs. 6,08,578 on account of bogus purchases.

(3) The assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for short "the CIT(A)"] on 21st April, 1986 in which both the issues about the bogus purchases as well as payments in contravention of Section 40-A(3) of the Act were agitated.

(4) During the pendency of the aforesaid appeal the assessee filed a revised return on 31st March, 1987 to take the benefit of the Amnesty Scheme then in vogue, and offered an additional amount of Rs. 3 lacs for taxation. The assessee also submitted that the tax of Rs. 74,700 due on the additional income may be adjusted out of the excess amount already paid by it.

(5) The CIT(A) disposed of the appeal of the assessee,—*vide* his order dated 7th March, 1989. The addition of Rs. 6,08,578 on account of alleged bogus purchases was deleted. The other dispute about the four payments totalling Rs. 1,42,749 made in contravention of Section 40-A(3) of the Act, was restored to the file of the Assessing officer for readjudication.

(6) Meanwhile to regularise the revised return filed by the assessee on 31st March, 1987 offering an additional income of Rs. 3 lacs for taxation under the Amnesty Scheme, the Assessing Officer issued a notice under Section 148 on 16th Feburary, 1990. In response to this notice the assessee furnished a letter on 9th July, 1990 in which the validity of the notice was questioned. However, it was also stated that the original return filed may be treated as having been filed in compliance to the said notice.

(7) The Assessing Officer thereafter proceeded to complete the re-assessment initiated,—*vide* notice under Section 148 dated 16th Febuary, 1990 and also to give effect to the order of the CIT(A) dated 7th March, 1989 for readjudicating the issue about payments made in contravention of Section 40-A(3). He passed an order under Section 143(3) of the Act on 13th July, 1990 wherein he once again held that the four payments to the tune of Rs. 1,42,749 had been made in contravention of the provisions of Section 40-A(3) of the Act and added the said amount to the total income. He also made an addition of Rs. 3 lacs on the basis of the additional income offered in the return filed under the Amnesty Scheme.

(8) Aggrieved by the said order the assessee filed an appeal before the C.I.T. (A) on 27th May, 1991. The said appeal was disposed of,— *vide* order dated 8th July, 1991. The addition of Rs. 1,42,749 consisted of the following four payments :—

Date	Amount	Name of the Party
10-2-81	24,000	M/s. Rajnish Trading Company
28-3-81	61,795	M/s S & A Steel Industries, Mandi Gobindgarh.
26-6-80	17,000	Ditto
13-11-80	40,000	M/s Khurmi Steel Corporation Mandi Gobindgarh.

(9) The case put up by the assessee was that since the four parties were genuine and the payments had been made to them in cash on their insistence, the same fell within the exceptions provided in the circular no. 220(F. No. 206/17/176-ITA. II dated 31st May, 1977) issued by the Central Board of Direct Taxes and as such no disallowance under notice 40A(3) could be made. The CIT(A) accepted this explanation in respect of the first three payments of Rs. 24,000, Rs. 61,795 and Rs. 17,000. However, he upheld the disallowance of the 4th payment of Rs. 40,000 on the ground that the genuineness of the same had not been proved. Thus, out of the addition of Rs. 1,42,749 only an addition of Rs. 40,000 was sustained. The CIT(A) also deleted the addition of Rs. 3 lacs on the ground that the assessing officer had exceeded his jurisdiction in making the said addition. According to him when the revised return was filed on 31st March, 1987 the appellate proceedings were pending before the C.I.T. (A) and as the appellate proceedings were merely a continuation of the assessment proceedings, the C.I.T. (A) while deciding the appeal on 7th March, 1989 could have himself taken note of the revised return and made the addition on its basis. Thus, according to the C.I.T.(A), the assessing officer could not reopen the assessment under section 147 to rope in the amount of Rs. 3 lacs declared in the revised return and the only issue for consideration by the Assessing Officer in the remand proceedings was in respect of addition of Rs. 1,42,749.

(10) Against the order of the C.I.T.(A), the revenue filed an appeal before the Tribunal challenging the relief of Rs. 1,02,749 and Rs. 3 lacs granted by the C.I.T.(A). The assessee filed cross-objections in which the addition of Rs. 40,000 sustained under Section 40-A(3) of the Act was challenged. The Tribunal,—*vide* order dated 7th October, 1998 not only confirmed the C.I.T.(A)'s order in upholding the disallowance

of Rs. 40,000 made under Section 40-A(3) but also accepted the departmental appeal in respect of the payment of Rs. 24,000 which was also held to have been made in contravention of the said provision. The Tribunal found that the assessee had not fulfilled the requirements provided in the Board's circular itself and as such could not be said to be covered by the exceptions provided therein. The Tribunal also restored the addition of Rs. 3 lacs, which had been deleted by the C.I.T.(A) on the ground that the assessee had itself declared it in the return filed under the Amnesty Scheme.

(11) It is in this background that the questions formulated by this Court have to be answered. Regarding the question No. 1, the counsel for the appellant has reiterated his stand as taken before the authorities below and relies on the Board's circular dated 31st May, 1977. Shri R.P. Sawhney, Standing counsel for the department, relies upon the order of the Tribunal in support of the disallowance.

(12) We have heard the counsel for the parties and perused the records. The only defence of the assessee before the authorities below has been that the transactions fell within the exceptions provided in the Board's circular dated 31st May, 1977. No doubt the explanation rendered by the assessee in respect of the payments of Rs. 24,000 and Rs. 40,000 would be covered by the exceptional circumstances as provided in Board's circular, yet that by itself will not entitle the assessee to claim the relief. There is a further requirement provided in the Board's circular itself for furnishing of a confirmatory letter from the concerned parties. The relevant extract from the said circular is being reproduced below for the sake of convenience :—

> "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 transactions. The Income-tax Officer will however, record his satisfaction before allowing the benefit of rule 6DD(j)."

Admittedly no such letter in the above terms had been furnished by the assessee. In this view of the matter, this question has to be decided against the assessee and in favour of the revenue. We, therefore, hold that the Tribunal was justified in sustaininig the addition of Rs. 64,000 in view of the provisons of Section 40-A(3) of the Act read with rule 6DD of the Income Tax Rules.

(13) Coming to question No. 2, the learned counsel for the assessee has submitted that the Tribunal has wrongly upheld the addition on the ground that the assessee itself had shown the income of Rs. 3 lacs in the revised return. It has been contended that the Tribunal seems to have referred to the return filed on 31st March, 1987 which was an invalid return and as such was *nonest* in the eyes of law. In response to the notice under section 148 of the Act, the assessee had requested that the original return filed by it be treated as return filed in compliance of the said notice. Thus, it was argued that there was no return before the assessing officer during the re-assessment proceedings in which a sum of Rs. 3 lacs had been offered for assessment. Shri R. P. Sawhney Senior Advocate, on the other hand, supported the order of the Tribunal. It was contended by him that once the assessee had filed the return under the Amnesty Scheme offering an additional income of Rs. 3 lacs for taxation, the assessing officer had to accept the same and bring the additional income to tax. No further onus lay on the assessing officer to prove the existence of such an income.

(14) We have heard the counsel for the parties and perused the records. It is an undisputed fact that the assessee had filed its return on 31st March, 1987 offering an additional income of Rs. 3 lacs to take the benefit of the Amnesty Scheme which was then in vogue. This scheme had been introduced in June, 1985 and was valid upto 31st March, 1987. It offered amnesty from penal consequences to all those persons who came forward to declare their undisclosed income voluntarily. Various circulars had been issued by the Central Board of Direct Taxes in this behalf explaining the scheme and also clarifying the doubts of the assessees. *Vide* circular No. 451 dated 17th February, 1986 the Central Board of Direct Taxes had answered various questions about the scheme. It would be relevant here to reproduce the questions no. 1 and 2 and the answers thereto which would resolve the issue in hand.

> "Question No. 1.— What will be the procedure required to be followed by the assessee who wants to declare income or wealth in respect of the past years ?
>
> (a) in case where the assessments pertaining to those years are already completed ;
>
> (b) in case where the assessments in respect of those years are pending.

Answer—In cases where the assessments are already completed the tax payer should approach the concerned Commissioner of Income-

tax with the full disclosure of the amounts of income and/or wealth concealed in various years and should also file returns for the relevant years. He should also produce evidence of payment of taxes before 31st March, 1986. The filing of the returns will be regularized by issue of formal notices under section 148 of the Income-tax Act/section 1.7 of the Wealth-tax Act. In cases where the assessments are pending, the tax payer should file revised return before the Income-tax Officer along with evidence of payment of taxes.

Question No. 2—In respect of completed assessments, the question will arise whether the assessee should merely declare the income relevant to those years and pay the tax according to the rates prevalent in those years on such declared income or whether he is required to file the return of income showing the additional income ?

Answer : As metioned above, he must file a fresh return of income including the additional income."

(15) Here it needs to be clarification that initially the Amnesty Scheme was valid upto 31st March, 1986 but later it was extended upto 31st March, 1987. Thus, the year in answer to question No. 1 has to be read as 1987 in place of 1986. The above clarifications clearly show that the scheme itself provided for a procedure to regularise the returns filed under the Amnesty Scheme in cases where the assessment for the relevant assessment year stood already completed. The assessees were required to file the return of Income including the additional income and the said returns were to be regularised by issue of a notice under section 148 of the Act. This is precisely what has been done in this case. The assessee had filed the return offering the additional income of Rs. 3 lacs under the Amnesty Scheme after the assesssment for the assessment year 1981-82 had already been completed. The assessing officer, therefore, had rightly issued the notice under section 148 to regularise the said return and bring the amount of Rs. 3 lacs to tax. This action is clearly in accordance with the terms of the Amnesty Scheme and the assessee cannot possibly object to the additional income under the Amnesty Scheme being added to its total taxable income. In this view of the matter we are satisfied that the Tribunal has correctly restored the addition of Rs. 3 lacs. Thus, this question is also to be answered against the assessee.

(16) In this result the appeal is dismissed.

R.N.R

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