

Commissioner of Income Tax, Patiala v. M/s Avtar Singh & Sons,  
Patiala (S. S. Sodhi, A.C.J.)

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should be strictly construed and unless a benefit is clearly admissible a candidate should not be awarded grace marks. Even otherwise we should not let the grace become disgraceful. The sanctity of the University Examination compels Courts to lean in favour of merit rather than agree to award grace marks freely.

(12) In view of the above, I hold that the petitioner has secured 384 marks out of a total of 800 in the M.A. (English) Examination. He is not entitled to claim any grace marks. The order at Annexure P. 3 passed by the University is absolutely legal and valid. The writ petition is consequently dismissed. Keeping in view that it is a writ filed by a student, I do not award any costs.

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R.N.R.

Before : S. S. Sodhi & N. K. Kapoor, JJ.

COMMISSIONER OF INCOME TAX, PATIALA,—Applicant.

*versus*

M/S AVTAR SINGH & SONS, PATIALA,—Respondent.

*Income Tax Reference No. 246 of 1980.*

14th May, 1991.

*Income-tax Act, 1961 (XLIII of 1961)—S. 40-A (3)—Income-tax Rules, 1962—Rl. 6 DD (j)—Payment by assessee in cash to Supplier Company in contravention to S. 40-A (3)—Assessee claiming deductions on such expenditure—Assessee entitled to such deduction under rl. 6 DD (j) in exceptional circumstances, if the seller's identity is established and payments are genuine.*

*Held*, that the identity of the party to whom payments were made is beyond question and nor is there any doubt with regard to the genuineness of the payments. There is also in addition an affidavit from the Chief Accountant of Amrit Banaspati Company regarding these payments having been received in cash and duly accounted for in the Company's Books of Account and that these payments were received in cash as money was urgently needed by the Company after banking hours and receipt of it by crossed cheque or draft would have delayed payment and caused unnecessary hurdles in the proper conduct of the Company's business. These circumstances lead to the irresistible conclusion that payment made

by assessee in cash clearly fell within the exemption provided in clause (j) of rule 6 DD of the Rules.

(Para 12)

*Income Tax Reference from the order of Income Tax Appellate Tribunal, Chandigarh Bench, dated 5th November, 1980 arising out of ITA No. 999/Chandi-73-74 (Assessment Year 1972-73) and R.A. No. 52/Chandi/75-76.*

*The following question of law has been referred to this High Court for its opinion by the Income Tax Appellate Tribunal, Chandigarh for its opinion:—*

*Question arising out of I.T.A. No. 999/Chandi-73-74*

*“Whether on the facts and in the circumstances of the case, the tribunal was right in holding that the respondent’s case was not covered by the exception provided in clause (j) of Rule 6DD of the Income Tax Rules, 1962?”*

Ajay Kumar Mittal, Advocate, for the Petitioner.

B. S. Gupta, Sr. Advocate with Sanjay Bansal, Advocate, for the Respondent.

#### JUDGMENT

S. S. Sodhi, J.

(1) Avoidance of the rigor of Section 40-A (3) of the Income Tax, 1961, in terms of rule 6-DD of the Income Tax Rules, 1962 (hereinafter referred to as ‘the Act’ and ‘the Rules’ respectively) in respect of payments made by the assessee in cash is what constitutes the main issue in controversy in this reference.

(2) We are concerned here with the Assessment year 1972-73.

(3) The assessee is a registered firm which deals in the sale and purchase of items like ghee, sugar and maida. During the relevant Assessment Year, it purchased ghee of the aggregated value of Rs. 55,00,000 odd from Messrs Amrit Banaspati Company, Rajpura. This amount was paid to the supplier-Company on as many as 189 different occasions. These payments included payment of a total sum of Rs. 4,47,000 in cash on 15 occasions each of which involved payment of a sum exceeding Rs. 2,500. It is the case of the assessee that these payments in cash were made on account of the urgent demands made upon it by the supplier-Company. This explanation

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was, however, not accepted by the Income Tax Officer, who consequently included this amount of Rs. 4,47,000 in taxable income of the assessee.

(4) On appeal, on the other hand the Assistant Appellate Commissioner agreed with the assessee, observing; "I have carefully considered the arguments made on behalf of the appellant. In my opinion, urgent demands from Messrs Amrit Banaspati Company Ltd., Rajpura, of cash payments after bank hours and the payments made by the firm, in cash, in view of its reputation and non-charging of interest by the supplier-Company constituted exceptional circumstances for the appellant-firm to make payment in cash."

(5) Later, when the matter came up before the Income Tax Appellate Tribunal, it preferred the view of the Income Tax Officer and thus reversed the findings of the Assistant Appellate Commissioner in favour of the assessee.

(6) It is in this factual background that the following question has now been referred for the opinion of this Court. It reads as under:—

"Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the respondent's case was not covered by the exception provided in clause (j) of Rule 6DD of the Income Tax Rules, 1962?"

(7) According to the provisions of Section 40A(3) of the Act (as they stood at the relevant time), where the assessee incurs expenditure in cash, in excess of Rs. 2,500, such expenditure cannot be allowed as a deduction. Relief from the rigor of this provision is, however, provided by clause (j) of rule 6DD of the Rules, which is reproduced hereunder:—

"(j) in any other case, where the assessee satisfies the Income Tax Officer that the payment could not be made by a crossed cheque drawn on a bank or by a crossed bank draft—

(1) due to exceptional or unavoidable circumstances, or

(2) because payment in the manner aforesaid was not practicable, or would have caused genuine difficulty to the

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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.”

(8) In clarification of the provisions of Section 40A(3) of the Act and clause (j) of rule 6DD of the Rules, the Central Board of Direct Taxes issued circular 220 dated May 31, 1977, where, in paragraph 4, thereof, it was stated that though all the circumstances in which the conditions laid down in rule 6DD(j) would be applicable, cannot be spelt out, some of them which would seem to meet the requirements of the said rule are:—

- “(i) The purchaser is new to the seller; or
- (ii) The transactions are made at a place where either the purchaser or the seller does not have a bank account; or
- (iii) The transactions and payments are made on a bank holiday; or
- (iv) The seller if 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.”

(9) The said circular was noticed and considered in *Navsari Waste Cotton Products v. Commissioner of Income Tax, Gujarat-IV*, Ahmedabad, 163 I.T.R. 378, where it was held that it would appear from clauses (i) to (v) of paragraph 4 of the said circular that if the identity of the seller is known, it would be possible for the Department to cross-check if the payment in question was actually made in cash to the seller from whom goods were purchased and the requirements of rule 6DD(j) would stand satisfied if a letter is produced in respect of each transaction falling within the categories illustrated in paragraph 4 from the seller giving full particulars of his address,

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Sales Tax Number, if any, for purposes of proper identification, to enable the Income Tax Officer to satisfy himself about the genuineness of the transaction. It was further added that the circumstances indicated in paragraph-4 of the Circular were merely illustrative and not exhaustive; but the underlying idea was that if the seller's identity can be established, it would be possible for the Income Tax Officer to cross-check whether the transaction had, in fact, taken place as stated and was of a genuine nature.

(10) A similar view is expressed by the High Court of Calcutta in *Girdharilal Goenka v. Commissioner of Income Tax* (1), where it was observed that, "The circular of the Board is not exhaustive. It is only illustrative and the Assessing Officer has to take into account the surrounding circumstances, considerations of business expediency and the facts of each particular case, in exercising his discretion either in favour of or against the assessee". It was also held that the Income Tax Officer should take a practical approach to the problem and strike a balance between the direction of law and hardship to the assessee.

(11) Next to note is the judgment of the High Court of Gujarat in *Hasanand Pinjomal v. Commissioner of Income Tax, Gujarat* (2), where, it was observed, that "practicability for the purposes of rule 6DD(j) must be judged from the point of view of the businessman and not revenue and further that business expediency was one of the relevant factors".

(12) What we have here is that out of a total payment of over Rs. 54,00,000 odd to Amrit Banaspati Company in 189 transactions, the payments made in cash were barely to the tune of Rs. 4,47,000 and on only 15 occasions. The important point to be emphasised here is that the identity of the party to whom payments were made is beyond question and nor is there any doubt with regard to the genuineness of the payments. There is also in addition, an affidavit from the Chief Accountant of Amrit Banaspati Company regarding these payments having been received in cash and duly accounted for in the Company's Books of Account and what is more that these payments were received in cash as money was urgently needed by the Company after banking hours and the receipt of it by crossed cheque or draft would have delayed payment and caused unnecessary

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(1) 179 I.T.R. 122.

(2) 112 I.T.R. 134.

hurdles in the proper conduct of the Company's business. These circumstances, seen in the context of the aspect of business expediency, which as noticed earlier, has been held to be one of the important relevant factors in dealing with such matters, cannot, but lead to the irresistible conclusion that the payments made by the assessee, in cash, to the Amrit Banaspati Company Ltd. clearly fell within the exemption provided in clause (j) of rule 6DD of the Rules.

(13) Faced with this situation, Mr. Ajay Mittal, counsel for the Commissioner of Income Tax sought to rely upon *Hari Chand Virender Paul v. Commissioner of Income Tax, Patiala-I* (3), where payment of Rs. 28,000 odd in cash, by an assessee was held not to fall within clause (j) of rule 6DD of the Rules. A reading of this judicial precedent would show that the decision there was founded upon the peculiar facts of that case. The exceptional circumstances pleaded by the assessee being the demand of the seller for payment, in cash, after banking hours. It was found that the goods had been purchased on credit basis a number of days earlier and the assessee, therefore, had ample opportunity to make payment by crossed-cheque or bank draft and there were thus no such exceptional or unavoidable circumstances which could justify non-compliance with the provisions of sub-section (3) of Section 40A of the Act. These facts bear little or no resemblance to the circumstances of the present case and this precedent cannot, thus operate against the assessee.

(14) Taking therefore, an over-all view of the entire circumstances of the case, in the context of the settled position in law, as discussed, the reference is hereby answered in the negative in favour of the assessee and against revenue. There will, however, be no order as to costs.

*J.S.T.*

*Before : S. S. Sodhi & N. K. Kapoor, JJ.*

M/S DALIMA BJSCUTTS LTD., RAJPURA.—*Applicant.*

*versus*

THE COMMISSIONER OF INCOME-TAX, PATIALA,—*Respondent.*

*Income-tax Reference No. 23 of 1980.*

30th May, 1991.

*Income-tax Act, 1961 (XLIII of 1961)—S. 32 (1) (vi)—Claim for initial depreciation on machinery—Assessee installed and commissioned electric generator set for its business—However, assessee*

(3) 140 I.T.R. 148.