

**THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN**

**AND**

**THE HON'BLE SRI JUSTICE C.V.BHASKAR REDDY**

**+ I.T.T.A.No.75 of 2006**

% Date: 09.11.2022

# M/s. Sri Murugan Ghee Store

... Appellant

**v.**

\$ The Income Tax Officer and another

... Respondents

! Counsel for the appellant : Mr. Karthik Ramana Puttamreddy

^ Counsel for respondents : Mr. J.V.Prasad  
(Standing Counsel for Income Tax Department)

< GIST:

➤ HEAD NOTE:

? CASES REFERRED:

1. (1991) 4 SCC 385
2. (1980) 121 ITR 680 Orissa : 1979 SCC Online Ori 167
3. (1991) 190 ITR 242 (All)
4. 2012 (247) CurTR 616

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**I.T.T.A.No.75 of 2006**

**JUDGMENT:** *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. Karthik Ramana Puttamreddy, learned counsel for the appellant and Mr. J.V.Prasad, learned Standing Counsel for Income Tax Department appearing for the respondents.

2. This appeal has been filed under Section 260-A of the Income Tax Act, 1961 (briefly, "the Act" hereinafter) by the assessee assailing the legality and validity of the order dated 27.12.2005 passed by the Income Tax Appellate Tribunal, Hyderabad Bench 'A', Hyderabad (Tribunal) in I.T.A.No.1094/Hyd/2004 for the assessment year 2001-2002.

3. We find from the docket proceedings that on 13.03.2006 stay was granted by this Court subject to payment of 50% of the demanded tax. Thereafter, the appeal was admitted on 17.04.2006, but no substantial question of law was framed.

4. From the memo of appeal we find that appellant has proposed a number of questions as substantial questions of law. However, we are of the view that the following two questions would cover the controversy in question:

i) Whether on the facts and in the circumstances of the case, Tribunal was justified in affirming the disallowance made by the assessing officer in payments beyond Rs.20,000.00 in cash in terms of Rule 6DD(f)(ii) of the Income Tax Rules, 1962 (briefly, "the Rules" hereinafter), in other words, denying the benefit of exemption under the aforesaid provision?

ii) Whether on the facts and in the circumstances of the case, Tribunal was justified in holding that the benefit of exemption contained in Rule 6DD(f)(ii) of the Rules would not be available when total payment made exceeds Rs.20,000.00?

5. Appellant is an assessee under the Act having the status of a firm. It is engaged in the business of sale of butter and also converting butter into ghee for sale. Assessment year under consideration is 2001-2002.

6. By the assessment order dated 31.03.2004, assessing officer noted that the appellant had made certain payments in cash beyond Rs.20,000.00 to two companies but sought

exemption by applying Rule 6DD(f)(ii) of the Rules. Referring to the provisions contained in Section 40A(3) of the Act and Rule 6DD(f)(ii) of the Rules, the cash payments made to the two companies from which assessee had purchased dairy product i.e., cream, exceeding Rs.20,000.00 was disallowed at the rate of 20% and was added to the total income of the appellant which was quantified at Rs.9,58,395.00.

7. In appeal before the first appellate authority i.e., Commissioner of Income Tax (Appeals)-V, Hyderabad (briefly, "the CIT(A)" hereinafter), the disallowance made by the assessing officer under the above head was confirmed vide the order dated 03.09.2004.

8. Thereafter, appellant preferred further appeal before the Tribunal. By the order dated 27.12.2005, Tribunal took the view that Rule 6DD(f)(ii) of the Rules would be applicable only if the seller carries on dairy farming and not otherwise. Tribunal held that the two companies from which appellant had purchased cream were not carrying on the business of dairy farming. Therefore, this ground of

appeal was rejected by the Tribunal. On the second ground, Tribunal held firstly that incurring of expenditure by the assessee was above Rs.20,000.00 and splitting the payment in smaller amounts would not take the case out of the mischief of Section 40A(3) of the Act. That apart, Tribunal held that appellant had factually failed to show that the certificate given by the auditors is wrong. Therefore, this contention of the appellant was also rejected.

9. Hence, this appeal.

10. Learned counsel for the appellant furnished a compilation comprising relevant portion of the statute and citations and submits therefrom that a careful analysis of Rule 6DD(f)(ii) of the Rules would go to show that cash payments made by the appellant to the two companies for procurement of cream would be entitled to the benefit thereunder. He particularly emphasised on the language of clause (f)(ii) of Rule 6DD of the Rules and submits that the word "dairy" is not prefixed or suffixed by any explanation or elaboration to restrict the same to dairy farming.

Therefore, providing a restrictive meaning to the above expression would be contrary to the legislative intent. In support of such contention, he has placed reliance on the decision of the Supreme Court in **Attar Singh Gurmukh Singh v. Income Tax Officer, Ludhiana**<sup>1</sup>. He has also taken us to Section 40A(3) of the Act and submits that on a conjoint reading of Section 40A(3) of the Act and Rule 6DD(f)(ii) of the Rules, it would be evident that the revenue authorities were in error in denying the benefit of Rule 6DD(f)(ii) of the Rules to the appellant for individual cash transactions above Rs.20,000.00. To support his contention that it is not the entirety of the transactions which is to be taken into account for the purpose of Rule 6DD(f)(ii) of the Rules but each individual transaction, learned counsel for the appellant relied upon a decision of the Orissa High Court in **Commissioner of Income Tax, Orissa v. Aloo Supply Co.**<sup>2</sup> SLP filed against the above decision was dismissed by the Supreme Court, he submits.

11. Reverting back to the order of the Tribunal, learned counsel for the appellant submits that the Tribunal fell in

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<sup>1</sup> (1991) 4 SCC 385

<sup>2</sup> (1980) 121 ITR 680 Orissa : 1979 SCC Online Ori 167

error in relying upon the decision of the Allahabad High Court in **Commissioner of Income Tax v. Pehlaj Rai Daryanmal**<sup>3</sup> inasmuch as the decision of the Allahabad High Court was rendered in the context of cash payments, not being made directly to the producers of forest produce, but to brokers or to timber suppliers which cannot be equated with the factual scenario of the present appeal.

12. On the other hand, Mr. J.V.Prasad, learned Standing Counsel representing the respondents relied upon the decision of Himachal Pradesh High Court in **Smt. Chanchal Dogra v. Income Tax Officer**<sup>4</sup> and submits therefrom that a milk producers union cannot be considered to be producer of milk. It is the individual member who can only be a producer of milk. He has meticulously taken us to the orders passed by the assessing officer, CIT(A) and that of the Tribunal and submits that the proposed substantial questions of law do not arise in the facts and circumstances of the case. He further submits that admittedly appellant had purchased cream from two companies which in turn had purchased

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<sup>3</sup> (1991) 190 ITR 242 (All)

<sup>4</sup> 2012 (247) CurTR 616

milk from the actual producers of milk. The two companies were not engaged in dairy farming. Appellant's cash payments to the two companies therefore cannot be said to be payments made to dairy farmers. In that view of the matter, appellant is not entitled to the benefit of Rule 6DD(f)(ii) of the Rules. Insofar contention of learned counsel for the appellant that the Tribunal had erred in considering the totality of the transactions instead of each individual transaction, he submits from the assessment order that assessing officer very clearly mentioned that cash payments exceeding Rs.20,000.00 for each time would attract provisions under Section 40A(3) of the Act. Therefore, this question does not arise at all in the facts of this case.

13. Submissions made by learned counsel for the parties have received the due consideration of the Court.

14. To appreciate the rival contentions it would be apposite to advert to the statutory provisions at the outset. We may mention that Section 40A(3) of the Act has

undergone several amendments. The said Section as it stood at the relevant point of time is as under:

“Where the assessee incurs any expenditure in respect of which payment is made, after such date (not being later than the 31st day of March, 1969), as may be specified in this behalf by the Central Government by notification, in the Official Gazette, in a sum exceeding two thousand five hundred rupees otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft, such expenditure shall not be allowed as a deduction :.....”

15. The second proviso to Section 40A(3) read as under:

“Provided further that no disallowance under this sub-section shall be made where any payment in a sum exceeding two thousand five hundred rupees is made otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft, in such cases and under such circumstances as may be prescribed, having regard to the nature and extent of banking facilities available, considerations of business expediency and other relevant factors.”

16. Thus, the Section as it stood at the relevant time says that where an assessee incurs any expenditure in respect of any payment in a sum exceeding two thousand five hundred rupees otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft, such expenditure shall not be allowed as a deduction. As per the second

proviso, no disallowance under sub-section (3) would be made where any payment in a sum exceeding two thousand five hundred rupees is made otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft, in such cases and under such circumstances as may be prescribed, having regard to the nature and extent of banking facilities available, considerations of business expediency and other relevant factors.

16.1. It may be mentioned that the amount of two thousand five hundred rupees was increased to twenty thousand rupees.

17. Rule 6DD of the Rules is the appropriate Rule in terms of the aforesaid provision. Rule 6DD of the Rules as it stood at the relevant point of time read as under:

**“R.6DD. Cases and circumstances in which payment in a sum exceeding twenty thousand rupees may be made otherwise than by an account payee cheque drawn on a bank on account payee bank draft** – No disallowance under sub-section (3) of Section 40A shall be made where any payment in a sum exceeding twenty thousand rupees is made otherwise than by an account payee cheque drawn on a bank or account payee bank draft in the cases and circumstances specified hereunder namely:-

- (a) where the payment is made to –
- (i) the Reserve Bank of India or any banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);
  - (ii) the State Bank of India or any subsidiary bank as defined in section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959);
  - (iii) any co-operative bank or land mortgage bank;
  - (iv) any primary agricultural credit society as defined in clause (cii) of section 2 of the Reserve Bank of India Act, 1934 (2 of 1934), or any primary credit society as defined in clause (civ) of that section;
  - (v) the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956);
  - (vi) the Industrial Finance Corporation of India established under section 3 of the Industrial Finance Corporation Act, 1948 (15 of 1948);
  - (vii) the Industrial Credit and Investment Corporation of India Ltd;
  - (viii) the Industrial Development Bank of India established under section 3 of the Industrial Development Bank of India Act, 1964 (18 of 1964);

- (ix) the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963);
  - (x) the Madras Industrial Investment Corporation Ltd., Madras;
  - (xi) The Andhra Pradesh Industrial Development Corporation Ltd., Hyderabad;
  - (xii) the Kerala State Industrial Development Corporation Ltd., Trivandrum;
  - (xiii) the State Industrial and Investment Corporation of Maharashtra Ltd., Bombay;
  - (xiv) the Punjab State Industrial Development Corporation Ltd., Chandigarh;
  - (xv) the National Industrial Development Corporation Ltd., New Delhi;
  - (xvi) the Mysore State Industrial Investment and Development Corporation Ltd., Bangalore;
  - (xvii) the Haryana State Industrial Development Corporation Ltd., Chandigarh;
  - (xviii) any State Financial Corporation established under section 3 of the State Financial Corporation Act, 1951 (63 of 1951);
- (b) where the payment is made to Government and, under the rules framed by it, such

payment is required to be made in legal tender;

- (c) where under any contract entered into by the assessee before the 1st day of April, 1969, the payment is required to be made in legal tender;
- (d) where the payment is made by—
- (i) any letter of credit arrangements through a bank;
  - (ii) a mail or telegraphic transfer through a bank;
  - (iii) a book adjustment from any account in a bank to any other account in that or any other bank;
  - (iv) a bill of exchange made payable only to a bank.

*Explanation:-* For the purposes of this clause and clause (h), the term “bank” means any bank, banking company or society referred to in sub-clauses (i) to (iv) of clause (a) and includes any bank not being a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949), whether incorporated or not, which is established outside India;

- (e) where the payment is made by way of adjustment against the amount of any liability incurred by the payee for any goods supplied or services rendered by the assessee to such payee;

- (f) where the payment is made for the purchase of-
  - (i) agricultural or forest produce; or
  - (ii) The produce of animal husbandry (including hides and skins) or dairy or poultry farming; or
  - (iii) fish or fish products; or
  - (iv) the products of horticulture or apiculture,  
to the cultivator, grower or producer of such articles, produce or products;
- (g) where the payment is made for the purchase of the products manufactured or processed without the aid of power in a cottage industry, to the producer of such products;
- (h) where the payment is made in a village or town, which on the date of such payment is not served by any bank, to any person who ordinarily resides, or is carrying on any business, profession or vocation, in any such village or town;
- (i) where any payment by way of gratuity, retrenchment compensation or similar terminal benefit, is made to an employee of the assessee or the heirs of any such employee on or in connection with the retrenchment, resignation, discharge or death of such employee, if the income chargeable under the head "Salaries" of the employee in respect of the financial year in which such retirement, resignation, discharge or death took place or

the immediately preceding financial year did not exceed Rs.7,500;

- (j) where the payment is made by an assessee by way of salary to his employee after deducting the income tax from salary in accordance with the provision of section 192 of the Income Tax Act, 1961, and when such employee—
  - (A) is temporarily posted for a continuous period of fifteen days or more in a place other than his normal place of duty or on a ship; and
  - (B) does not maintain any account in any bank at such place of ship;
- (k) where the payment was required to be made on a day on which the banks were closed either on account of holiday or strike;
- (l) where the payment is made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person;
- (m) where the payment is made by an authorized dealer or a money changer against purchase of foreign currency or travellers cheques in the normal course of his business.

*Explanation:--* For the purpose of this clause, the expression 'authorised dealer' or 'money changer' means a person authorized as an authorized dealer or money changer to deal in foreign currency or foreign exchange under any law for the time being in force."

18. A reading of Rule 6DD of the Rules, as extracted above, would go to show that no disallowance under subsection (3) of Section 40A of the Act shall be made where any payment in a sum exceeding Rs.20,000.00 was made otherwise than by an account payee cheque drawn on a bank or account payee bank draft in the cases and circumstances specified thereunder. As per clause (f)(ii) of Rule 6DD of the Rules, where the payment is made for the purpose of agricultural or forest produce or the produce of animal husbandry including hides and skins or dairy or poultry farming, to the cultivator, grower or producer of such articles, produce or products, the restrictions or disallowance under Section 40A(3) of the Act would not be attracted. In other words, any payment made for the purchase of dairy products to the cultivator, grower or producer of such articles produced or products i.e., dairy products, then the cash payments made above Rs.20,000.00 would be eligible for the benefit under Rule 6DD of the Rules. In such cases there would be no disallowance of cash payments above Rs.20,000.00. Thus, to avail the said benefit the payment would have to be

made to a cultivator or to a grower or to a producer of dairy produce or products.

19. In the instant case, appellant had made the purchases of cream from two companies called M/s. Heritage Foods India (P) Ltd., and M/s. Cannemara Dairy Products Pvt. Ltd. It is on record that these two companies had in turn purchased milk from the cattle farmers. Question for consideration is whether cash payments made to these two companies can be termed as payments made to a cultivator, grower or producer of dairy produce or products. On the facts before us it is evident that these two companies are purchasers of intermediaries from the actual farmers, namely, milk which is processed into cream which in turn is purchased by the appellant for the purpose of converting cream into butter and ghee and thereafter selling in the market. The two companies cannot be said to be a cultivator or grower or producer of milk or cream which are undoubtedly dairy products. In the circumstances, any payment made to the two companies would not be a payment made to a cultivator or grower or producer of a dairy product so as to bring the

cash transaction within the mischief of Rule 6DD(f)(ii) of the Rules. If that be the position, no fault can be found with the view taken by the Tribunal in affirming the disallowance made by the assessing officer as confirmed by CIT(A).

20. In view of our above finding, it may not be necessary for us to answer the second question so framed. Nonetheless, we find from the assessment order that assessing officer had considered each individual payment made by the appellant exceeding Rs.20,000.00 and not the sum total of the payment. Relevant portion of the assessment order reads as under:

“13. While examining the firm’s books of account for the F.Y 2000-01, it is found that the firm has main purchases from two companies M/s. Heritage Foods & M/s. Cannemara Dairy. The firm is making payments to these two limited companies by way of cash and cheque. The total cash payments exceeding Rs.20,000/- for each time will attract provisions u/s 40A(3) of the Income Tax Act. During the year under consideration the total cash payments exceeding Rs.20,000/- on each time is worked out at Rs.42,72,925/- towards M/s Cannemara Dairy Products Pvt. Ltd., and Rs.5,19,050/- towards M/s Heritage Foods (India) Pvt. Ltd. The cash payments exceeding Rs.20,000/- is also worked out and arrived the above

amounts and attached to the audit report submitted along with return of income.

14. Accordingly a show cause notice was issued to the firm on 12-03-2004, stating the facts that the firm is making cash payments towards its purchases from M/s Cannemara Dairy Products Pvt. Ltd., and M/s Heritage Foods (I) Ltd., which exceeding Rs.20,000/-. As per income tax provisions u/s 40A(3), if the assessee made payments in excess of Rs.20,000/- by way of cash which attracts disallowance of 20% on such payments. In the Audit report submitted along with return of income, it was also mentioned that the assessee-firm has made cash payments during the financial year 2000-01, exceeding Rs.20,000/- to the parties M/s Cannemara Dairy Products Pvt. Ltd., and M/s Heritage Foods (I) Ltd., to the extent of Rs.42,72,925/- and Rs.5,19,050/- respectively.

15. It is clear that the firm is making cash payments to the Limited Companies, even these companies have their own bank accounts. There is no necessity for this firm to make payments in cash when both the parties have bank accounts. As per Income Tax Rules it is clearly mentioned in Rule 6DD that certain exemptions have been given to the assessee's in certain circumstances for claiming exemption on cash payments exceeding Rs.20,000/-.

16. In the present circumstances the assessee-firm is not eligible for exemption on payment of cash exceeding Rs.20,000/-. Hence, 20% of such cash payments exceeding Rs.20,000/- is proposed for disallowance.”

21. In the above factual backdrop, it was really not necessary for the Tribunal to have held that incurring of expenditure by the assessee was above Rs.20,000.00 and splitting the payment into smaller amounts would not take the case out of the mischief of Section 40A(3) of the Act. Be that as it may, such observation of the Tribunal would really not make any material difference to the fact scenario on the basis of which the question has been proposed.

22. In the circumstances, both the questions are answered against the assessee and in favour of the revenue.

23. The appeal is accordingly dismissed.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

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**UJJAL BHUYAN, CJ**

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**C.V.BHASKAR REDDY, J**

09.11.2022

Note: LR copy to be marked.  
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vs