

RAJASTHAN HIGH COURT

Fakri Automobiles

Vs.

Commissioner of Income-Tax

D.B. Income Tax Reference No. 5 of 1979
(Shri Kishan Mal Lodha and Sobhag Mal Jain, JJ.)

23.07.1985

JUDGMENT

Shri Kishan Mal Lodha, J.

1. In compliance with the order dated September 12, 1978, of this court passed in D.B. Income-tax Case No. 2 of 1976, the Income-tax Appellate Tribunal, Jaipur Bench, Jaipur (" the Tribunal " herein), has referred the following three questions for our opinion :

"(1). Whether the Income-tax Appellate Tribunal had any material to arrive at its conclusion that diesel of ₹ 14,026 (18,000 litres) recorded on July 4, 1970, in the cash book and the stock register of the applicant-firm represented the suppressed stock ?

(2). Whether the Income-tax Appellate Tribunal was, at any rate, justified in holding that the aforesaid sum of ₹ 14,026 was liable to be included in the total income of the applicant-firm as ' income from undisclosed sources ' ?

(3). Whether the Income-tax Appellate Tribunal was correct in holding that the purchases of diesel worth ₹ 14,026 recorded on July 4, 1970, was ' an expenditure ' within the meaning of Section 40A(3) of the Income-tax Act, 1961 ? "

The assessee-petitioner carries on business in petrol, diesel, kerosene, motor parts, etc., at Banswara. The accounting year of the assessee-firm for the assessment year ended on October 30, 1970. On July 4, 1970, the assessee debited in its cash book a

sum of ₹ 14,026 against the purchase price of 18,000 litres of diesel. The quantity of diesel purchased recorded in the stock register on July 4, 1970, is as under :

"1,500, 1,000, 2,100, 1,500, 2,100, 1,800, 1,500, 2,100, 2,100, 1,500 = 18,000 litres.

2. In the cash book, the assessee made an entry in respect of purchase of diesel in one lump sum. The assessee did not obtain purchase voucher. However, Kalimuddin, partner of the assessee-firm, submitted an affidavit to the effect that during Samvat year 2026, the firm had purchased 18,000 litres diesel worth ₹ 14,025.75 from various private parties to meet the temporary scarcity in the area. According to the assessee-firm, the said purchases were recorded in one lump sum in the books of account on July 4, 1970. The case of the assessee-firm was that no single purchase of diesel so recorded was of the value of ₹ 2,500 or more. The Income-tax Officer by his order dated December 15, 1972, held that the assessee was in possession of diesel amounting in value of ₹ 14,026 on July 4, 1970, whose source of acquisition remained not explained. He, therefore, invoked the provisions of Section 40A(3) of the Income-tax Act, 1961 (No. XLIII of 1961) (for short "the Act" herein), and considered the payment to be an expenditure. It was taken as inadmissible under the aforesaid provision. On appeal by the assessee, the Appellate Assistant Commissioner affirmed the order of the Income-tax Officer, vide his order dated April 30, 1983. He opined that no private party can deal in diesel unless licensed to do so. If the purchases were from the licensed and established dealers, there is no reason why the assessee should not get purchases verified from them. He did not place reliance on the " self-created evidence " and it was taken that it did not prove the assertion of the assessee. He also maintained the applicability of Section 40A(3) of the Act. The assessee went up in further appeal before the Tribunal. The Tribunal in its order dated October 20, 1974, observed as under :

" We are, therefore, of the opinion that the purchase in question on July 4, 1970, has not been proved. The inference of the Income-tax Officer that the stock of 18,000 liters of diesel sold is the suppressed stock in the circumstances is correct. It could not have been acquired in one day. From the evidence on record and having regard to human probabilities, it is also clear to us that it

must have been built up gradually. The payment of ₹ 14,026 from the cash book on July 4, 1970, would not be the source of this gradual acquisition of this stock, for it is the alleged outgoing of cash against the alleged purchases on July 4, 1970 alone. Once the purchases are shown not to have been there on July 4, 1970, the source loses its value as explaining the acquisition of diesel. The authorities were, therefore, in our opinion, right in adding the value of this diesel as the assessee's income from undisclosed sources as the timing and source of their acquisition remains unproved and unexplained. "

On the question of the applicability of Section 40A(3) of the Act (as there is only one entry in respect of the payment of the price of diesel purchased), it was held by the Tribunal that it was only one payment. The assessee's contention was repelled that the word " expenditure " does not include purchase. An application filed by the assessee under Section 256(1) of the Act was rejected on February 14, 1975. The assessee filed an application under Section 256(2) of the Act to this court praying for stating the case and referring the questions of law arising out of its order. In pursuance of that, the aforesaid questions have been referred for our opinion.

3. We have heard Mr. Rajendra Mehta, learned counsel for the assessee, and Mr. B. R. Arora for the Revenue. We have also examined the order dated October 22, 1974, of the Tribunal and having considered that order and the facts and circumstances of the case, we consider it proper to deal with question No. 3 first. Before we do that, we may mention that the Tribunal, as stated above, came to the conclusion that the payment of ₹ 14,026 is clearly caught in the net of Section 40A(3) of the Act. It, therefore, affirmed the order passed by the authorities below that the aforesaid amount was rightly added back in terms of Section 40A(3) of the Act as an alternative. One of the partners, namely, Shri Kalimuddin, of the assessee-firm filed an affidavit explaining the entries in the stock book and cash book in the following terms :

"That during S.Y. 2026, the above firm had also purchased diesel (18,000 litres) worth ₹ 14,025.72 from various private parties to meet its temporary scarcity in the area and the said purchases were recorded in one lump sum in the firm's books of account on July 4, 1970, and was of the value of ₹ 2,500 or more. "

The stand taken by the assessee was not accepted by the Income-tax Officer. It was

held by him that this purchase is not verifiable and, therefore, the assessee was in possession of diesel amounting to ₹ 14,026 on July 4, 1970, and its source of acquisition is not explained. The Income-tax Officer observed that the assessee has inflated the purchase of diesel by this amount, by introducing a fictitious entry while actually no purchase has been made corresponding to this entry. The Appellate Assistant Commissioner, as stated above, affirmed that finding. Before the Tribunal, the contention on behalf of the assessee was that the word "expenditure" does not include a "purchase". It was rejected by the Tribunal on the ground that "expenditure" denotes an outgoing and the payment for purchase is an outgoing inasmuch as the price paid for the purchase of labour or the purchase of expertise, management, etc. It is this finding of the Tribunal which forms the subject-matter of question No. 3. We may read the material part of Section 40A:

"40A. Expenses of payments not deductible in certain circumstances.--(1) The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other provision of this Act relating to the computation of income under the head 'Profits and gains of business or profession'.....

(3) 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 :

Provided that where an allowance has been made in the assessment for any year not being an assessment year commencing prior to the 1st day of April, 1969, in respect of any liability incurred by the assessee for any expenditure and subsequently during any previous year the assessee makes any payment in respect thereof 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, the allowance originally made shall be deemed to have been wrongly made and the Income-tax Officer may recompute the total income of the assessee for the previous year in which such liability was incurred and make the necessary amendment, and the provisions of Section 154 shall, so far as may be, apply thereto, the period of four years specified in Sub-section (7) of that section being reckoned from the end of the assessment year next following the previous year in which the payment was so made :

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. "

4. The word " expenditure " has not been denned in the Act. The various expenditures of which deductions are allowable are dealt with in Sections 30 to 37 of the Act and Section 40A(3) deals with only those deductions. The word " expenditure " in some other context was referred to by the Supreme Court in *Indian Molasses Co. (Private) Ltd. v. Commissioner of Income Tax* ¹ and it was observed therein as follows (headnote):

"Spending ' in the sense of ' paying out or away ' of money is the primary meaning of ' expenditure '. ' Expenditure ' is what is paid out or away and is something which is gone irretrievably. Expenditure, which is deductible for income-tax purposes, is one which is towards a liability actually existing at the time, but the putting aside of money which may become expenditure on the happening of an event is not expenditure."

It is well-settled by a catena of cases of some of the High Courts of the country that the word " expenditure " in Section 40A(3) cannot be limited or restricted to expenditure which is allowed as a deduction under Sections 33 to 39 being overall expenses such as rent, taxes, repairs, insurance, salary, etc., deductible from the gross income and is liable to tax.

5. The word " expenditure " in Section 40A(3) according to us has wide import and it includes expenses which are taken into account while determining the gross profit.

6. Before a Division Bench of the Orissa High Court in *Sajowanlal Jaiswal v. Commissioner of Income Tax* ² the question which cropped up for consideration was, whether the expenditure referred to in Section 40A(3) refers only to the expenditure that could be claimed as a deduction under Section 37 or to any payment made by the assessee and taken into account in computing the total income under the provisions of the Act. The precise question in that case was whether the expenditure includes

payment for goods for resale. R. N. Misra J., as he then was, speaking for the court, observed as under (p. 710) :

"The expenditure referred to in Section 40A(3) of the Income-tax Act is not confined to expenditure that could be claimed as a deduction under Section 37 and refers to any payment made by the assessee and taken into account in computing the total income under the provisions of the Act."

7. In *U.P. Hardware Store v. Commissioner of Income Tax* ³ in the accounting year relevant to the assessment year 1970-71, the assessee-firm had made payments in cash exceeding the sum of ₹ 2,500 for some purchases. The total of such payments was ₹ 55,471. It was contended on behalf of the assessee that payments made for purchase of stock-in-trade could not be called "expenditure" and, as such, Section 40A(3) was not applicable. The contention was repelled by the Allahabad High Court holding that there was no justification for accepting the plea that the word " expenditure " used in Section 40A(3) should be restricted to overhead expenses enumerated in Sections 30 to 43 A, including depreciation allowance, etc., and that the payments made for purchases would also be covered by the word " expenditure " and such payments could be disallowed if they are made in cash in sums exceeding ₹ 2,500. The court opined that the payments made for purchases are expenditure within the meaning of Section 40A(3) of the Act.

8. *Sajowanlal Jaiswal's case* ⁴ and *U, P. Hardware Store's case* ⁵ were followed in *Commissioner of Income Tax v. Grewal Group of Industries* ⁶ It was held by the Division Bench of the Punjab & Haryana High Court consisting of O. Chinnappa Reddy J., as he then was, and S. P. Goyal J. that to exclude from the meaning of the word " expenditure, " used in Section 40A(3) of the Act, payments made for goods purchased, is to once again make it difficult for the Revenue to properly investigate payments and to open the door for evasion. To quote (headnote) :

"Payments made for purchase of goods fall within the meaning of the expression ' expenditure ' occurring in Section 40A(3). "

9. The Allahabad High Court reiterated the view taken in *U.P. Hardware Store's case* ⁷ *Addl. Commissioner of Income Tax v. Nathimal Badri Prasad* ⁸ and *Addl*

Commissioner of Income Tax v. Ram Narain Kishan Gopal ⁹ It was held that it would cover the payments made for purchase of raw material for stock-in-trade, for carrying on manufacturing or trading business also and such payments would be disallowed if they are made in cash exceeding ₹ 2,500.

10. Before the Kerala High Court in *P.R. Textiles v. Commissioner of Income Tax* ¹⁰ the question was, whether the payment for purchase of textiles in excess of ₹ 2,500 is expenditure liable to be disallowed under Section 40A(3) of the Act. Indian Molasses Company's case [1959] 37 ITR 66 (SC) was referred to. It was held that the amount incurred as expenditure for purchase of textiles cannot be taken into account in computing the profits and gains.

11. One of the questions that arose in *Commissioner of Income Tax v. Avtar Singh and Sons* ¹¹ was, whether the word "expenditure" used in Section 40A(3) of the Act does not cover expenditure on purchase of stock-in-trade ? It was held that the word "expenditure" used in Section 40A(3) covers the expenditure on purchase of stock-in-trade. *Grewal Group of Industries' case* ¹² *Commissioner of Income Tax v. New Light Tin Manufacturing Co.* ¹³ and *Commissioner of Income Tax v. Kishan Chand Maheshwari Dass* ¹⁴ were followed.

12. No authority taking a view contrary to the one taken by the Allahabad, Kerala, Orissa and Punjab & Haryana High Courts was brought to our notice by the learned counsel for the parties.

13. We, therefore, on the basis of the aforesaid decisions, hold that the word "expenditure" in Section 40A(3) of the Act is of wide import. It includes the price paid for the purpose of stock-in-trade and/or raw materials, etc., and such payments, in our considered opinion, fall within the sweep of Section 40A(3) of the Act. We are in respectful agreement with the view taken in the aforesaid decisions referred to hereinabove. The cash book refers to the payment of ₹ 14,026 in one lump sum for the purchase of 18,000 litres of diesel. This is undoubtedly a sum in excess of ₹ 2,500 having regard to the meaning of the word "expenditure" used in Section 40A(3) of the Act. The Tribunal was right in holding that the purchase of diesel worth ₹ 14,026 recorded on July 4, 1970, was an "expenditure" within the meaning of Section

40A(3) of the Act. Question No. 3 referred to us by the Tribunal is, therefore, answered in the affirmative, in favor of the Revenue and against the assessee.

14. In view of our answer to question No. 3, we are of the opinion that question Nos. 1 and 2 need not be answered because in the face of the answer given by us to question No. 3, their answers in the affirmative or negative, i.e., for or against the assessee or the Revenue, as the case may be, is not of much consequence, for, in any case, the amount involved will not be deductible in the computation of income Under the head " Profits and gains of business or profession ".

15. We, therefore, do not consider it necessary to give our decision on question Nos. 1 and 2.

16. The reference is accordingly disposed of.

17. In the circumstances of the case, we leave the parties to bear their own costs of this reference.

18. The Tribunal may be informed of the judgment given by us today as required by Section 260 of the Act.

Cases Referred.

1. [1959] 37 ITR 66
2. [1976] 103 ITR 706
3. [1976] 104 ITR 664 (All)
4. [1976] 103 ITR 706 (Ori)
5. [1976] 104 ITR 664 (All)
6. [1977] 110 ITR 278 (P & H)
7. [1976] 104 ITR 664 (All)
8. [1979] 116 ITR 409 (All)
9. [1979] 116 ITR 776 (All)
10. [1980] 121 ITR 237
11. [1981] 129 ITR 671 (P & H)
12. [1977] 110 ITR 278 (P & H)
13. [1980] 121 ITR 229 (P & H)
14. [1980] 121 ITR 232 (P & H)

