IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal Nos.645, 646 & 647 of 2019
and
C.M.P.No.18806 of 2019

M/s.Vaduganathan Talkies,
No.11/1, Old No.6,
Murrays Gate Road,
Alwarpet, Chennai-600 018.
AADFV6069R .. Appellant/Appellant in T.C.A.No.645 of 2019

M/s.Lena Talkies,
No.11/1, Murrays Gate Road,
Alwarpet, Chennai-600 018.
AAAFL2556Q .. Appellant/Appellant in T.C.A.Nos.646 & 647 of 2019

-vs-

Income Tax Officer,
Non-Corporate Ward 20(5),
Chennai-34. .. Respondent/Respondent in all TCAs

Appeals under Section 260A of the Income-tax Act, 1961, against the common order dated 25.04.2019 made in I.T.A.No.3434/Chny/2018, I.T.A.No.3433/Chny/2018 & I.T.A.No.3432/Chny/2018 on the file of the Income Tax Appellate Tribunal 'C' (SMC) Bench, Chennai for the assessment years 2014-15, 2015-16 and 2014-15 respectively.

For Appellant (In all TCAs)	:	Mr.R.L.Ramani, Senior Counsel
	:	assisted by Ms.C.P.Priya
For Respondent (In all TCAs)	:	Ms.S.Premalatha Standing Counsel
	:	for Mr.M.Swaminathan, Senior Standing Counsel

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COMMON JUDGMENT

(Delivered by T.S.Sivagnanam, J.)

These appeals have been filed by the appellant/assessees under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) challenging the common order dated 25.04.2019, made in I.T.A.No.3434/

Chny/2018, I.T.A.No.3433/Chny/2018 and I.T.A.No.3432/Chny/2018 on the file of the Income Tax Appellate Tribunal 'C' (SMC) Bench, Chennai (for brevity "the Tribunal") for the assessment years 2014-15, 2015-16 and 2014-15 respectively.

2.Before us, there are two assessees, viz., Vaduganathan Talkies, whose relevant assessment year is 2014-15 and Lena Talkies, whose assessment years are 2014-15 and 2015-16.

3.The assessees have raised the following substantial questions of law for consideration of this Court:-

> *"1. Whether on the facts and circumstances of the case, the Tribunal was right in not looking into proviso to Section 40A(3) wherein no disallowance can be made u/s.40A(3) having regard to the nature and extent of banking facilities available, consideration of business expediency and other relevant factors?*
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> *2. Whether on the facts and circumstances of the case, the Tribunal was right in holding that Rule 6DD has not been satisfied, without looking into the*

legality that second proviso to Section 40A(3) is a substantive provision of the law and satisfaction of Rule 6DD will not affect the exemption from the rigor of Section 40A(3)?

3. Whether on the facts and circumstances of the case, the Tribunal was right in confirming the addition when the assessee had discharged its onus of proving the genuineness of the transactions and identity of the film producers/distributors? and

4. Whether on the facts and circumstances of the case, the Tribunal was right in rejecting the documents like copies of agreements and confirmation from film distributors and film producers filed at the time of hearing without restoring the matter to the lower authorities to check on the veracity of the documents filed?"

4.It is an admitted case of the assessees that cash payments were effected by the assessees for the purpose of acquiring rights to screen movies in their theatres. The Assessing Officer referring to Section 40A(3) of the Act held that the cash payments exceeded Rs.20,000/- and ran to several lakh of rupees and accordingly, disallowed the expenses under

Section 40A(3) of the Act and completed the assessment under Section 143(3) of the Act by order dated 30.06.2016. The assessees preferred appeals before the Commissioner of Income Tax (Appeals)-14, Chennai (for brevity "the CIT(A)). The appeals were dismissed by order dated 28.09.2018. Challenging the same, the assessees filed appeals before the Tribunal, which were dismissed by the impugned order.

5.The learned Senior Counsel would contend that the assessees had produced a list containing the payments made by the assessees in cash to various parties, those payees were identifiable and the assessees also produced letters from the payees to show that the payees have received the money and accounted for the same in their books and the payees had also furnished their Permanent Account Numbers (PAN). Therefore, it is submitted that the genuineness of the transactions can never be doubted more particularly when, 75% of the payments effected by the assessees were through banking channel, that is, through cheques or bank drafts. This aspect was not even considered by the Assessing Officer or for that matter the CIT(A) or the Tribunal and therefore, it is submitted that the

genuineness of the transactions is a very relevant factor, which should be taken into consideration. In this regard, reliance was placed on the decision of the Hon'ble Supreme Court in the case of **Attar Singh Gurmuk Singh Etc. vs. Income Tax Officer [(1991) 191 ITR 0667].** It is submitted that this decision was followed by the Hon'ble Division Bench of this Court in the case of **CIT vs. Chrome Leather Co. (P) Ltd. [(1999) 235 ITR 0708].**

6.Further, it is submitted that the conduct of the assessees also should have been noted because it is not as if the Assessing Officer had culled out these details by himself during the course of assessment, but these details were disclosed in the Auditors' report filed by the assessees. Further, it is submitted that the Central Board of Direct Taxes has issued guidelines in Circular No.220, dated 31.05.1997 prescribing limits – circumstances when Income Tax Officers can relax requirements of making payments in excess of the stipulated amount. It is submitted that the Hon'ble Division Bench in **Chrome Leather Co. (P) Ltd.** (supra) had considered the circular and held that the circumstances mentioned therein are illustrative and not exhaustive and the underlying idea of the circular is that if the identity of the payee is

known, it would be possible for the Income Tax Officer to cross check whether the transaction had, in fact, taken place.

7.Further, it is submitted that as held in **Attar Singh Gurmuk Singh** (supra), Section 40A(3) of the Act must not be read in isolation or to the exclusion of Rule 6DD of the Income Tax Rules, 1962 (hereinafter referred to as "the Rules") and the Section must be read along with the Rule. Reliance was placed on the decision of the Hon'ble Supreme Court in **S.A.Builders Ltd. vs. CIT(A) [(2007) 288 ITR 1 (SC)]** to explain as to what is business expediency and that the Assessing Officer cannot put himself in the arm-chair of the businessman or in the position of the Board of Directors and assume the role to decide how much is reasonable to explain. Thus, the learned Senior Counsel submitted that a verification needs to be done by the authorities or at least by the Tribunal to examine the genuineness of the plea raised by the assessees.

8.The learned Standing Counsel for the Revenue submitted that the assessees have not been able to bring their cases under any one of the

exceptional circumstances in Rule 6DD and having failed to bring the same under the exceptional clauses, the authorities as well as the Tribunal rightly denied relief to the assessees. Further, it is submitted that the assessees did not furnish the full details in the relevant column in the return of income and these details were available only in the annual report, which will go to show the conduct of the assessees. It is further submitted that the assessees are established parties and therefore, to say that they effected cash payments due to certain circumstances is an unacceptable plea. That apart, both the assessees are based on Chennai and nothing prevented them to avoid payment through banking channels. Further, the assessees have failed to prove unavoidable circumstances, which necessitated payments by cash over and above a sum of Rs.20,000/-. Further, the genuineness of the transaction is not a factor to be considered while deciding a case under Section 40A(3) of the Act. Further, it is submitted that commercial expediency or business expediency depends on facts and, the authorities rightly concluded on facts against the assessees. In support of her contention, the learned Standing Counsel referred to the following decisions:-

(i) D.S.Madiahswamy vs. ITO [T.C.(A) No.166 of 2011: dated 22.01.2019];

(ii) Natesan Krishnamurthy vs. ITO [(2019) 103 taxmann.com 342 (Madras)];

(iii) CIT vs. Vasantha Subramanian Hospitals (P.) Ltd. [(2018) 98 taxmann.com 292 (Madras)];

(iv) N.Mohammed Ali vs. ITO [(2016) 65 taxmann.com 189 (Madras)];

(v) P.K.Ramasamy Nadar & Bros. vs. ITO [(2014) 41 taxmann.com 538 (Madras)];

(vi) Aggarwal Steel Traders vs. CIT [(2000) 109 Taxman 283 (Punj. & Har.)];

(vii) M.G.Pictures (Madras) Lt.d vs. ACIT [(2015) 57 taxmann.com 66 (SC)] and

Circular No.220, dated 31.05.1997.

9.We have elaborately heard Mr.R.L.Ramani, learned Senior Counsel assisted by Ms.C.P.Priya, learned counsel for the assessees and

Ms.S.Premalatha, learned Standing Counsel for Mr.M.Swaminathan, learned Senior Standing Counsel appearing for the Revenue.

10.Section 40A deals with expenses or payments not deductible in certain circumstances. In this case, we are concerned about the applicability of Section 40A(3) on the assessees. For better reference, we quote the said sub-Section along with the first proviso hereunder:-

> *"**Section 40A(3):-** Where the assessee incurs any expenditure in respect of which 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, no deduction shall be allowed in respect of such expenditure.*
>
> ***Provided** that no disallowance shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-section (3) and this sub-section 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 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."

11.In terms of the above provision, where the assessee incurs expenditure in respect of which 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 or through electronic clearing system, exceeds twenty thousand rupees, no deduction shall be allowed in respect of such expenditure. The proviso gives a window to the assessees and it states that no disallowance shall be made and no payments shall be deemed to be profits and gains of business or profession under sub-Section (3) of Section 40A, where payment exceeds twenty thousand rupees in such cases under such circumstances as may be prescribed, having regard to the nature and extent of banking facilities available, consideration of business expediency and other relevant factors, the circumstances which have been prescribed under Rule 6DD of the Rules.

12.Rule 6DD of the Rules deals with 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. Various circumstances have been set out in clauses (a) to (l) of Rule 6DD of the Rules.

13.We have carefully gone through all the clauses under Rule 6DD of the Rules and we find that the assessees cannot bring their cases under any one of the clauses as enumerated under Rule 6DD of the Rules. The issue before us is whether the Assessing Officer committed an error in not verifying the details given by the assessees, explaining the genuineness of the transaction, stating that the payees are identifiable, they have, in writing, confirmed receipt of payment, disclosed their PAN numbers and without verifying these details, was the Assessing Officer justified in throwing out the assessee's case and effecting the deduction under Section 40A(3) of the Act.

14.As rightly pointed out by the learned Standing Counsel for the respondent, the Commercial expediency or business expediency has to be decided on the facts of each case. From the decision of the Hon'ble Supreme Court, it appears that genuineness may be one of the factors to be taken note of, in our view, while considering as to whether the case would fall within any one of the circumstances set out in Rule 6DD of the Rules and not otherwise. We have seen the chart showing the payments effected by the assessees to various parties. The payments effected through the year under consideration is substantial.

15.It is the submission of the learned Senior Counsel for the appellants that only 25% of the payments effected by the assessees were by cash and the remaining 75% was through banking channels, that is, through cheque or demand draft. These factors will work against the assessees because the assessees are fully aware of the legal position that over and above Rs.20,000/-, the assessees would not be entitled to effect payment in cash in a day. Thus, merely because the assessees were able to identify the payees, who were more than 20 in number, would not be a mitigating factor

to grant relief to the assessees under the first proviso to Section 40A(3) of the Act.

16.On more aspect to be noted is that there has been periodical payments in cash. The explanation offered by the assessees is that due to compelling circumstances, they have to effect cash payments. The Revenue is right in their submission that the registered offices of the assessee-firm are in Chennai and therefore, it is not as if there were no banking facilities available in Chennai, nor any other exceptional circumstances, which compelled the assessees to make urgent cash payments. In the decisions referred to on either side, it is seen that in majority of the cases, it is a solitary payment or a few payments made under extraordinary circumstances. Therefore, the fact that the assessees had been regularly effecting payments in cash would be a circumstance which will work against the assessee.

17.The learned Senior Counsel sought to distinguish the decision in **N.Mohammed Ali** (supra) by contending that on facts, the Court found that the names of the agencies and agents or retailers were never furnished, contrary to the case of the assessees, where full details have been furnished. However, the correct test to be applied is to examine as to whether the expenses would fall under any one of the exceptional circumstances set out in Rule 6DD of the Rules. Considering the facts of the case, the concept regarding business expediency or commercial expediency can hardly be canvassed by the assessees, as the assessees had been periodically adopting the modes by effecting cash payments. Therefore, concurrently the two authorities and the Tribunal have held against the assessees and we are not expected to examine the correctness of the impugned order as if exercising powers as the third appellate authority and what we are expected to do is to consider as to whether any substantial question of law arises for consideration in these appeals, while exercising power under Section 260A of the Act.

18.In the light of the above discussion, we find that no question of

law, much less substantial question of law arises for consideration in these appeals.

19.It is noteworthy to point out that the Hon'ble Supreme Court in the case of **Attar Singh Gurmuk Singh** (supra), while testing the constitutional validity of Section 40A(3) of the Act, took note of Rule 6DD of the Rules as it stood then, which read as follows:-

> *"In our opinion, there is little merit in this contention. Section 40A(3) must not be read in isolation or to the exclusion of Rule 6DD. The Section must be read along with the Rule. If read together, it will be clear that the provi- sions are not intended to restrict the business activities. There is no restriction on the assessee in his trading activities. Section 40A(3) only empowers the assessing officer to disallow the deduction claimed as expenditure in respect of which payment is not made by crossed cheque or crossed bank draft. The payment by crossed cheque or crossed bank draft is insisted on to enable the assessing authority to ascertain whether the payment was genuine or whether it was out of the income from disclosed sources. The terms of*

Section 40A(3) are not absolute. Consideration of business expediency and other relevant factors are not excluded. The genuine and bona fide transactions are not taken out of the sweep of the Section. It is open to the assessee to furnish to the satisfaction of the assessing officer the circumstances under which the payment in the manner prescribed in Section 40A(3) was not practicable or would have caused genuine difficulty to the payee. It is also open to the assessee to identify the person who has received the cash payment. Rule 6DD provides that an asses- see can be exempted from the requirement of payment by a crossed cheque or crossed bank draft in the circumstances specified under the rule. It will be clear from the provisions of Section 40A(3) and rule 6DD that they are intended to regulate the business transactions and to prevent the use of unaccounted money or reduce the chances to use black-money for business transactions. See: Mudiam Oil Company v. ITO, [1973] 92 ITR 519 A.P. If the payment is made by a crossed cheque drawn on a bank or a crossed bank draft then it will be easier to ascertain, when deduction is claimed, whether the payment was genuine and whether it was out of the income from

disclosed sources. In interpreting a taxing statute the Court cannot be oblivious of the proliferation of black-money which is under circulation in our country. Any restraint intended to curb the chances and opportunities to use or create black-money should not be regarded as curtailing the freedom of trade or business."

20.Taking note of Clause (j) in Rule 6DD as it stood then, the Hon'ble Supreme Court held that when Section 40A(3) is read along with Rule 6DD of the Rules, it gives adequate protection to the assessees. This decision was referred to in **Chrome Leather Co. (P) Ltd.** (supra), as the case pertained to the assessment year 1974-75, when the old Rule 6DD(j) was in existence. However, the assessment years under consideration in these appeals are 2014-15 and 2015-16 when the said Rules stood deleted and therefore, the Revenue is right in contending that the genuinity of the transaction is hardly a matter, which should weigh in the minds of the Assessing officer while examining as to the whether the assessees had violated Section 40A(3) of the Act.

21.For the above reasons, the appeals stand dismissed holding that no substantial question of law arises for consideration in these appeals. No costs. Consequently, connected miscellaneous petition is closed.

(T.S.S., J.) (V.B.S., J.)
22.09.2020

Index : Yes
Speaking Order

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To

The Income Tax Appellate Tribunal 'C' (SMC) Bench, Chennai.

T.S.Sivagnanam, J.
and
V.Bhavani Subbaroyan, J.

(abr)

T.C.A.Nos.645, 646 & 647 of 2019

22.09.2020