

**GAUHATI HIGH COURT****Walford Transport (Eastern India) Ltd. Vs Commissioner Of
Income Tax**

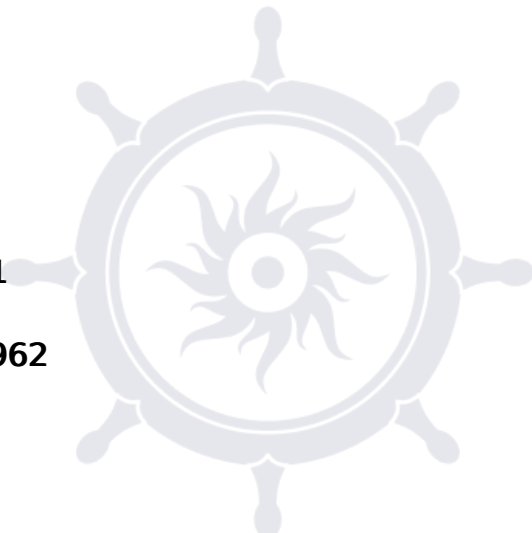
Income-tax Reference No. 3 of 1996

JUDGMENT DATE
08-01-1999JUDGES
BRIJESH KUMAR CJ
D. BISWAS JACTS AND SECTIONS
INCOME TAX ACT, 1961

- **SECTION 40A(3)**

INCOME TAX RULES, 1962

- **RULE 6DD**

PETITIONER
**WALFORD TRANSPORT (EASTERN
INDIA) LTD.**RESPONDENT
COMMISSIONER OF INCOME TAXBENCH
DIVISION BENCHCOUNSEL
**A.K. SARAF, K.K. GUPTA AND S.K. AGARWAL, FOR THE APPELLANT; K.P.
SHARMA AND D. SUR, FOR THE RESPONDENT**

Brijesh Kumar, C.The questions of law referred for opinion of this court u/s
256(2) of the Income Tax Act, 1961, are-

"(i) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the appeal filed by the Revenue is not barred by limitation ?

(ii) Whether, on the facts and in the circumstances of the case, the financial crisis as faced by the assessee would amount to exceptional or unavoidable circumstances under Sub-clause (1) of Clause (j) of Rule 6DD of the Income Tax Rules, 1962 ?"

2. Heard Dr. A. K. Saraf, learned counsel appearing for the assessee, and Shri K. P. Sarma, appearing for the Revenue.

3. The dispute relates to the assessment years 1987-88 and 1988-89. At the very outset it may be indicated that in so far as question No. (i) is concerned, learned counsel for the assessee made a statement that the said question is not pressed. That being the position, it would not be necessary to go into the merits of that question to record any finding.

4. The brief facts for the purposes of answering the second question are that in the assessment year 1987-88 the assessee is said to have paid cash in excess of Rs. 2,500 amounting to Rs. 4,77,944 in a total of 61 transactions. According to the Revenue, this payment should have been made by crossed cheque or draft as required u/s 40A(3) of the Act. On the facts and on considering the explanation submitted by the assessee the Assessing Officer found that in respect of payment to the tune of Rs. 1,40,768 the assessee could not explain the payment in cash instead of by crossed cheque. So far as the payments in the assessment year 1988-89 are concerned, 75 payments were made in cash to the tune of Rs. 4,56,206 out of which payments totalling Rs. 9,198 by cash could not be justified.

5. The assessee preferred appeal before the Commissioner of Income Tax (Appeals). The case of the appellant was that his financial position during the said period was very bad and he had to resort to cash transaction avoiding risk of bouncing of cheques. The business was being carried out with the help of day-to-day cash collections which was being utilised for making payments. The appellate authority took into consideration the explanation submitted by the assessee wherein it is also stated that the parent company of the assessee was declared a sick unit by the Government of West Bengal and a huge amount of the assessee was blocked. It was left with no working capital. The appellate

authority also observed that it had examined the vouchers of payments and had found that names of the payees found place in each and every voucher. The Assessing Officer while disallowing deduction had observed that in many of the payments the name of the payee was not indicated in the voucher. The appellate authority on examining the said vouchers upset the finding of the assessing authority. Thus, on the facts, accepting the explanation of the assessee that its financial position was stringent compelling to make payment in cash, which according to it constituted one of the mitigating circumstances within the meaning of Rule 6DD of the Income Tax Rules, 1962. Hence, it was held that disallowance of deduction by the Assessing Officer was not justified.

6. The Revenue filed appeal against the judgment of the Commissioner of Income Tax (Appeals) before the Income Tax Appellate Tribunal, Guwahati Bench, Guwahati. The Appellate Tribunal upset the judgment of the Commissioner of Income Tax (Appeals). It has been observed by the Tribunal-- "... we may point out that the provisions of Section 40A(3) of the Income Tax Act must be read with the provisions of Rule 6DD and so to prove the identity of the payee and genuineness of transactions are not enough. The assessee is to prove the mitigating circumstances in view of Rule 6DD ...". The Tribunal has further observed--"mere passing through a financial crisis as a result of which payment had to be made in cash", would not be considered a mitigating circumstance. It was further observed that there was nothing to show that the parties insisted on cash payment or that the payments had to be made in the interest of the business. On the other hand, it was found that most of the payments were deferred payments. With the findings as indicated above, the Appellate Tribunal set aside the order passed by the Commissioner of Income Tax (Appeals) in appeal upholding the order passed by the assessing authority disallowing cash payments to the extent indicated earlier.

7. So far as the legal position is concerned, there is no dispute that the provisions of Section 40A of the Income Tax Act, 1961, are to be read with Rule 6DD of the Rules of 1962. Sub-section (3) of Section 40A provides that where an assessee incurs an expenditure making payment of a sum of Rs. 2,500 otherwise than by crossed cheque or crossed bank draft, such expenditure shall not be allowed as deduction. Rule 6DD of the Income Tax Rules provides that no disallowance under Sub-section (3) of Section 40A of the Act shall be made where any payment of more than Rs. 2,500 is made in cash in the circumstances which have been enumerated in different clauses out of which Clause (j) provides where the assessee satisfied the Income Tax Officer that payment could not be made by crossed cheque due to exceptional and

unavoidable circumstances or because payment in that manner was not practicable or due to some genuine difficulties, and furnish evidence to the satisfaction of the Income Tax Officer as to the genuineness of the payment and the identity of the payee.

8. From the above provisions it is clear that under Rule 6DD of the Income Tax Rules, 1962, it is open to the assessee to explain to the assessing authority the circumstances which compelled payment in cash of an amount of Rs. 2,500 or more. The genuineness of the transaction can also be explained. Such expenditure shall not be disallowed under Sub-section (3) of Section 40A of the Act.

9. In the case of *Attar Singh Gurmukh Singh v. ITO*, (1991) 191 ITR 667 (SC) , the Supreme Court has expressed the view that genuineness of the transaction and payments could be explained to the authorities and indicating different kinds of expenditure which could be covered by Rule 6DD of the Income Tax Rules. It has also been held that Section 40A(3) of the Income Tax Act is to be read with Rule 6DD of the Income Tax Rules, 1962.

10. So far as the facts of the present case are concerned, as indicated earlier the Assessing Officer partly accepted the explanation submitted by the assessee but in respect of the part of payments made in cash it was not accepted. That is to say, the reason which was indicated by the assessee regarding its financial stringency compelling it to make payment in cash, was accepted. It may be observed that the majority of the transactions in which payments were made for more than Rs. 2,500 was accepted. The circumstances in respect of the transactions were obviously the same except the distinction which has been indicated by the Assessing Officer to the effect that in some of the transactions the names of the payees were not indicated in the vouchers. In respect of the said finding it has already been indicated earlier that the Commissioner of Income Tax (Appeals) has held in its appellate order that it had examined each and every voucher submitted by the assessee and it was found that each voucher disclosed the name of the payee. Thus, the reason as disclosed by the Assessing Officer for not accepting certain transactions was found to be incorrect. The Commissioner of Income Tax (Appeals) was thus satisfied with the explanation submitted by the assessee about its financial stringency and the circumstances under which payments had to be made in cash. So far as the Appellate Tribunal is concerned, it has not upset the finding recorded by the Commissioner of Income Tax (Appeals) that the vouchers contained the names of the payees. On the other hand, it

observed that a mere proof of the identity of the payee and the genuineness of transactions are not enough. We feel that this observation of the Appellate Tribunal is legally not justified. The purpose of Section 40A(3) of the Act is to check evasion of tax and the flow of unaccounted money. But, in cases where the authorities are satisfied about the genuineness of the transaction and the identity of the payee, there would be no occasion to disallow such kind of payment in the circumstances of acute financial stringency which has been accepted by the assessing authority in relation to a major part of the payments. In our view, where the transaction is found to be genuine and the identity of the payee is established a liberal view of compelling and mitigating circumstances should be taken. It is not the finding of any of the authorities that any of the transaction was not genuine. About the identity of the payee, we have already observed that the finding of the Assessing Officer has been found to be incorrect by the Commissioner of Income Tax (Appeals), The finding of the Commissioner of Income Tax (Appeals) has not been upset by the Appellate Tribunal. The payments made in similar circumstances, namely, due to financial stringency to the genuine parties in genuine transactions have been allowed by the assessing authority.

11. One of the reasons indicated by the Appellate Tribunal is that the payment was made in many of the cases, in respect of old bills also, that is to say, deferred payments. In connection with the above, learned counsel for the assessee has placed reliance upon a decision in [Shri Mahabir Industries Vs. Commissioner of Income Tax](#), A Division Bench of this court has held that by the reason that there has been long gap between submission of bill and making of payment, the conclusion cannot be drawn that payment would not be covered by Rule 6DD(j) of the Rules. It has further observed that exceptional and unavoidable circumstances may vary depending on the facts of each case. The Appellate Tribunal, in our view, erred in drawing the inference that in no circumstance deferred payment would be covered by Rule 6DD(j) of the Income Tax Rules.

12. Reliance has also been placed on cases in [Hasanand Pinjomal Vs. Commissioner of Income-tax, Gujarat](#), and [Giridharilal Goenka Vs. Commissioner of Income Tax](#), . It has been held that the object of the provision is to prevent evasion of taxes and not to disallow legitimate expenditure. The Circular No. 220 (see [1977] 108 ITR 8), dated May 31, 1977, must be interpreted liberally. It has further been held that the time between the date of bills and the date of payment cannot be a ground to disallow expenditure where the transactions were genuine and the business was new. It has been

observed by a Division Bench of the Calcutta High Court in the above noted case that Circular No. 220 (see [1977] 108 ITR 8), dated May 31, 1977, is illustrative and not exhaustive and the Assessing Officer is to take into account the surrounding circumstances, considerations of business expediency and the facts of each particular case. In yet another decision in [The Janambhumi Vs. Commissioner of Income Tax](#), a Division Bench of this court took the view that the circular of the Board regarding unavoidable circumstances in which cash payment over and above Rs. 2,500 would be allowable is not exhaustive, but only illustrative. The genuineness of the payee not being in doubt, in the facts and circumstances of the case, it was found that the expenditure should have been allowed. In a case reported in [Kanti Lal Purshottam and Co. Vs. Commissioner of Income Tax](#), a Division Bench of the Rajasthan High Court took the view that where the genuineness of the payments has been established and the default was only technical, the assessee would be entitled for benefit of exemption under Rule 6DD.

13. Learned counsel appearing for the Revenue has submitted that the payments have not been genuine, on the basis of the finding of the assessing authority where it has observed that on some of the vouchers the names of the payees were not indicated. As indicated earlier, this finding of fact has been upset by the Commissioner of Income Tax (Appeals) on checking each voucher and it was observed that the names of the payees were indicated. From a perusal of the decisions of different High Courts referred to above, it clearly emerges that the purpose of Section 40A(3) of the Act is not to penalise the assessee for making cash payment of an amount of Rs. 2,500 or above. The purpose is only preventive and to check evasion of tax and flow of unaccounted money or to check transactions which are not genuine and may be put as camouflage to evade tax by showing fictitious or false transactions.

14. In view of the facts and circumstances of the case and the discussion held above, in our view, the Appellate Tribunal legally erred in setting aside the order passed by the Commissioner of Income Tax (Appeals) allowing the appeal and allowing the deduction of expenditure made by the assessee in cash over and above Rs. 2,500. The answer to question No. (ii) would be in the affirmative.

